



**បន្ទីរកម្ពុជាសម្រាប់ការដោះស្រាយជម្លោះ**

**Cambodian Centre for Conflict Resolution**  
under the auspices of the Cambodia Development Resource Institute

# **Nature and Causes of Conflict Escalation in the Cambodian Election**

**Caroline Hughes**  
with Real Sopheap

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**Cambodia Development Resource Institute / Cambodian Centre for Conflict Resolution  
Phnom Penh, January 2000**

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January 2000**

Caroline Hughes with Real Sopheap

(Caroline Hughes received funding from the Leverhulme Trust as a Study Abroad Scholar during this project.)

*Responsibility for the ideas, facts and opinions presented in this research paper rests solely with the authors. Their opinions and interpretations do not necessarily reflect the views of the Cambodia Development Resource Institute or the Cambodian Centre for Conflict Resolution.*

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## Foreword

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The research study conducted by the Cambodian Centre for Conflict Resolution on the “Nature and Causes of Conflict in the 1998 National Election” has been a most challenging project for both CCCR and the Cambodia Development Resource Institute. The study began in January 1999, two months after the opening of the new National Assembly, and five months after the first democratic multi-party election organised by Cambodians in three decades. The election itself represented a significant achievement for the Cambodian people, and was an important step in the process of democratisation in Cambodia. At the same time, the conflicts which emerged around the election process had costly consequences for the country, leading to mass protests and violence in Phnom Penh, and a three-month political crisis before a new government was formed. The fact that these conflicts arose is a symptom of many things, among them a long legacy of war and conflict, inexperience in running a democratic election, and also the fact that democratic processes are not yet sufficiently developed or well respected in Cambodia.

The conflicts and escalation of conflict which surrounded the 1998 election highlighted problems in society which are not uncommon to post-conflict societies. They also revealed the weaknesses of the structures and institutions of state which, in more established democratic societies, serve to mediate conflict. This study was undertaken on the premise that understanding the nature and sources of conflict is a first step in preventing its recurrence, or at best, in managing it in a peaceful and sustainable way. It is precisely in the current peaceful interim period, before the commune election scheduled for 2000, when reflection and consideration of better solutions and new patterns of interaction are possible. This is also the time when political parties are most amenable to dialogue and alternatives, and when the best hope for making sustainable change lies.

The main purpose of the study on the “Nature and Causes of Conflict in the 1998 National Election” was to draw lessons from the national election of 1998 in order to improve the electoral process for the commune election due in the year 2000. The study itself challenged CCCR and CDRI in many ways. It approached a complex and highly sensitive topic which had only recently polarised much of Cambodian society, and which still evokes bitter and emotional debate. The researchers constantly encountered conflicting facts which required verification, divergent interpretations of situations, and unclear boundaries between respondents’ perceptions and reality. Under those circumstances, the study does not attempt to give an authoritative version of the “truth” of any conflict situation, or to apportion blame or responsibility. Rather, it attempts to compare the various perspectives from which different groups observed or understood the events of 1998, as a means of gaining a deeper understanding of the conflicts which arose between them. A particular emphasis is placed on those factors and perceptions which reduced the authority of political processes to resolve or mediate conflict, or which caused conflicts to escalate.

We challenge our readers to approach the study and its findings in the same spirit of understanding, and to look beyond the conflict itself to the symptoms and the dynamics underlying it. Many of the sources of conflict which this study illuminates are remediable. It is not easy, but it is

possible. In this regard, the study offers a message of hope. The fact that it addresses conflict in no way diminishes the fact that the election was a historic step for Cambodians. The 1998 election could not have happened without the commitment of the Cambodian government or of the many individuals who persevered against tremendous obstacles and who put aside their differences to work together in the interest of the people. These are signs of promise for the future.

Conflict is not necessarily a negative process. It can generate positive change and improvement. Even the most intensive conflicts are capable of being managed in a way that is both peaceful and sustainable, given the right combination of procedures and institutions. But what contributes most to peaceful conflict management is the attitudes of key stakeholders, the quality of their leadership, and the skills they bring to processes of negotiation and problem-solving, both with adversaries and within their own constituencies.

I would like to take this opportunity to thank the authors of this study, Caroline Hughes and Real Sopheap, for undertaking this difficult and scholarly task with the utmost care and impartiality. I would also like to thank all our respondents and interviewees for contributing their views and perceptions openly, for a better understanding of the issues surrounding the election of 1998. Although the study will not satisfy all our readers' questions on the 1998 election, we will consider it a success if it manages to inspire some of you to conclude that the quest to understand and manage conflict peacefully is a worthy and attainable one.

*Eva Mysliwiec, Director of the Cambodia Development Resource Institute, and  
Co-Chair of the Cambodian Centre for Conflict Resolution, January 2000*

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## **List of Acronyms**

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ASEAN	Association of Southeast Asian Nations
BLDP	Buddhist Liberal Democratic Party
CEC	commune election committee
COFFEL	Coalition for Free and Fair Elections
COMFREL	Committee for Free and Fair Elections in Cambodia
CPP	Cambodian People's Party
EU	European Union
FUNCINPEC	Front Uni National pour un Cambodge Indépendent, Neutre, Pacifique et Coopératif
IRI	International Republican Institute
JIOG	Joint International Observer Group
KNP	Khmer Nation Party
NDI	National Democratic Institute
NEC	National Electoral Committee
NGO	non-governmental organisation
NUF	National United Front
OUNSGPRC	Office of the United Nations Secretary-General's Personal Representative in Cambodia
PEC	provincial electoral committee
RFA	Radio Free Asia
SCM	Supreme Council of Magistracy
SRP	Sam Rainsy Party
UNCOHCHR	United Nations Cambodia Office of the High Commissioner for Human Rights
UNTAC	United Nations Transitional Authority in Cambodia
VOA	Voice of America
VOCE	Volunteer Observers of the Cambodian Election

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## Introduction

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This research project began as an investigation into the views of senior electoral organisers, participants and observers as to the causes and nature of conflict escalation in the 1998 election. Some of the interviewees contacted for the present study commented that the 1998 election was more peaceful than anticipated, and it was widely agreed that it was more peaceful than the 1993 UNTAC election. Problems arose, however, which led to accusations of fraud by the opposition parties. Opposition party supporters joined mass demonstrations in Phnom Penh to protest against alleged electoral fraud, and bloodshed resulted. According to the results of UN investigations, two demonstrators were killed, another 50 reported disappeared, and 16 bodies, believed by some to be the victims of extra-judicial killings, were found.<sup>1</sup> Refusal by the opposition parties to accept the election results as authoritative led to a political crisis lasting almost three months because agreement could not be reached over the form of a new government.

At the time of writing, one year after the demonstrations, relative political stability has returned to Cambodia. The significance of the political crisis of August–November 1998 is open to re-evaluation. When this research project began, in January 1999, just two months after the opening of the new National Assembly, the problems which surrounded the election and its results were more vivid.

In itself, the passage of time presents problems for a study of conflict. Those who opposed one another on the streets of Phnom Penh in September 1998 may have different interests now, and be unwilling to revisit earlier conflicts. Furthermore, the most intractable aspects of conflicts arise from different interpretations or understandings of a situation by different parties. Differing interpretations can include whether or not a significant and legitimate conflict of interests really existed, as opposed to a crime, or an incident sparked by *agents provocateurs*, or a similar “illegitimate” political event.

The fact that a centre for conflict resolution presents a research study on the problems surrounding the election already implies that conflicts of interest over the organisation of the election occurred in 1998. Given the conceptual framework adopted by conflict resolution practitioners, it further implies that these conflicts involved legitimate concerns on all sides, were symptomatic of underlying sources of instability in Cambodian society, and were significant enough to be worthy of study within such a conceptual framework. It is recognised that these assumptions may not be shared by all electoral participants, or by all of those who participated in the interviews on which this report is based, but such assumptions are necessary to a conflict resolution approach to the study of political events.

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<sup>1</sup> Statement from Thomas Hammarberg issued in New York on 16 September 1998. For the purpose of this study, the electoral process is viewed as ending with the final decision on election complaints made by the Constitutional Council in September 1998.

Proceeding from this assumption, the present study views the conflicts analysed as issues for the entire community, problematic for election winners and losers alike. Democratic processes are intended to resolve peacefully and smoothly the normal, everyday conflicts that arise in complex societies, without resort to mass protest and violence. The fact that this did not occur in 1998 is a symptom of the fact that democratic processes are not yet sufficiently well-established or well-respected in the Cambodian polity. Consequently, democratic processes are not yet able to work well in legitimising governance or lending authority to the will of the people as expressed in an electoral mandate.

Furthermore, the holding of the election in 1998 represented a highly self-conscious attempt to contribute to the resolution of conflicts over power between the various political parties. Many of the deeper conflicts between the political parties were diverted into conflicts over the organisational conduct of the election because of the self-consciousness of the exercise. The election was made problematic as a result, placing a great and highly politicised burden on the state agencies charged with implementing it.

These problems are compounded by a political environment in which the relationship between the political parties is highly conflictual, while state agencies are weak. As a consequence, there remains a heavy reliance upon international intervention and mediation to create frameworks for multi-party action. This encourages, first, manipulation of internationally imposed standards and frameworks by different parties in an attempt to gain advantage over their rivals, and second, accusations by various parties that their rivals have gained such an advantage. It also permits continued international manipulation of divisions in Cambodian political society.

Although the 1998 experience showed that the Cambodian parties are capable of competing in a relatively peaceful election, the parties did not succeed in negotiating the terms for such a competition by themselves. Partly as a consequence of this, each party perceived its rivals as unwilling to subject themselves to the electoral process as equals. This perception had repercussions for each party's own decisions and behaviour.

A further problem was the inexperience of organisers, participants and voters in competing in elections. Problems in the socio-economic environment make the organisation and training of actors difficult, because lack of infrastructure, communications equipment, education and funding all impose constraints on the speed and ease with which training can be delivered, directives distributed and processes implemented. In the highly politicised and mistrustful atmosphere which existed in early 1998, mistakes or misunderstandings heightened political tension by engendering suspicions or accusations of malpractice.

To investigate the connection between these factors and the conflicts which arose after the election, the researchers conducted 43 interviews with senior members of the National Electoral Committee (NEC) and the Ministries of Interior and Information, six political parties, and 24 NGO observer groups, to elicit their views on the sources of conflict and resources for conflict resolution in the Cambodian polity. A preliminary report outlining some of the causes and effects of conflict was discussed at a conference held in June 1999 in Phnom Penh. The present paper sets out the full research findings, supplemented by views offered at the 1999 conference.

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## **1. The Nature of Democratic Elections**

### *1.1. Power and Authority*

The usefulness of elections in a democratic polity depends on the greater stability which emerges from reliance upon authority rather than naked power in governance. Power may be defined simply as the ability to make others act in ways they would not otherwise have chosen. Strategies for exercising power may include manipulation, coercion, deterrence, conditioning, force, and promotion of anticipatory surrender (Connolly 1983:93). To exercise power means to affect the actions of others without the need to gain their acquiescence. A powerful government may use all the above means to gain the compliance of unwilling citizens.

Authority, by contrast, may be defined as the ability to get others to agree voluntarily to act in ways they would not otherwise have chosen. Connolly describes the relationship as follows:

“When you exercise authority over me I comply voluntarily with your command...because of certain characteristics you and I attribute to the position you occupy” (Connolly 1983:110).

In the democratic model, broad agreement on the rightfulness of the electoral process which brings a government to office imbues that government with authority. The authority awarded to the government by the electoral mandate encourages citizens to obey the government’s commands, even when doing so conflicts with their immediate private interests. A democratic system is perceived as serving the interests of all people in the long run. Consequently, concern to support and preserve such a system, by means of good citizenship and public spirited cooperation, outweighs concern to promote immediate individual interests at the expense of political stability. By this means, elections and the democratic process promote effective governance and political stability, without the need to resort regularly to repressive measures such as armed force.

### *1.2. Political Community*

Elections are most effective in this respect when there is a well-entrenched consensus which perceives electoral democracy to serve the long-term interests of all. Taylor describes this as a function of community spirit:

“In practice, a nation can only ensure the stability of its legitimacy if its members are strongly committed to one another by means of a common allegiance to the political community. It is the shared consciousness of this commitment which creates confidence on the part of the various subgroups that they will indeed be heard” (Taylor 1998:114)

Individual commitment to the long-term political health of the community arises from two beliefs. First, individuals must view themselves as inescapable parts of a unified community, coexisting with other members of the community. Second, they must view the community, and the relationships of coexistence within it, as continuing and infinite. A perception that coexistence in the present is unbearable and/or optional, or that the future of community relationships is threatened or threatening, is likely to cause individuals to defect from a democratic consensus and pursue their own interests at the expense of the community.

Of further importance is the post-electoral relationship between winners and losers. To maintain their commitment to the political community, losers must be offered a secure and meaningful place in the post-electoral polity. Political parties in a model democratic system exist in an open-ended relationship, in which neither side desires or attempts the destruction of the other. An election result is not a final ending, but a staging post. In model liberal democracies, electoral mandates are subject both to strict time limits and to the limits to government action imposed by the rights of citizens. Because both victory and defeat are limited and temporary, rather than total and final, the stakes of competition are reduced.

In stable democratic polities, the relationship between political parties is competitive, but usually it is not conflictual. Parties temper their competition with an awareness that they share a common interest in the long-term welfare of the community. In their comparative study of democracy in developing countries around the world, Diamond, Linz and Lipset found that:

“A stable democracy requires relatively moderate tension among its contending political parties.... If political freedom and competition are not to descend into extremism, polarisation and violence, there must be mechanisms to contain conflict within certain behavioural boundaries” (Diamond, Linz & Lipset 1990:16).

Such mechanisms include, as a matter of priority, guarantees of security and political freedoms to members of defeated opposition parties. These allow parties to subordinate immediate party interest

to the long-term interest of the community. Where guarantees of security and political freedoms are not made available to defeated parties, these parties are likely to pursue their own security and freedom at the expense of the community, through direct action or violence.

Effective use of elections also requires that the challenge of opposition parties is taken seriously by the winning party. The usefulness of elections arises in large part from the open debate they engender. Through debate, parties acknowledge the legitimacy of one another's claims to political participation in the setting of public agendas. By this means, positions may be tempered and accommodations reached, which strengthen stability and boost authoritative governance.

In the three-dimensional theory of power outlined by Lukes, one form of power comprises attempts to "prevent...currently observable grievances (overt or covert) from becoming issues within the political process" (Lukes 1974:37). Refusal to address the concerns of minority or subordinate groups entails alienation from the electoral process by these groups. The election ceases to be a mechanism for community organisation, and becomes harnessed to the desire for domination of a particular group.

A political community in which different groups acknowledge the legitimacy of one another's claims, recognise their interdependence, and expect that interdependence to continue indefinitely, underpins the authority of an electoral process. Successful elections in turn contribute to the ongoing fostering of community spirit in three important ways:

- They provide a single government viewed as legitimate by the entire community, and thus prevent difficult and dangerous disputes over power;
- They offer an opportunity for public discussion of policy issues, in public meetings, within parties, and through the national media. In this way, a single national policy agenda emerges from the huge variety of individual and group interests within the community; and
- They unite the whole electorate as equal participants in a national event, strengthening links between citizens and their political representatives, and engaging everyone in decision-making over the future of the nation.

By these means, elections encourage closer links between supporters of different parties, even though those parties continue to compete against one another. The chance to contribute to the political agenda, and to make one's voice heard, binds individuals and groups more closely to the community as a whole and causes them to identify their own long-term interests with those of the democratic political community. Because elections foster the conditions for their own success, it is to be expected that one successful election will increase the likelihood of another.

Conversely, to the extent that an unsuccessful election entrenches mutual suspicion and polarises political positions, community spirit is undermined and individuals alienated. The perception that an election has not provided equal opportunities for all participants, but has increased the dominance of one group over another, may increase a sense of threat felt by subordinate groups in their political relationships. Consequently, an unsuccessful election may increase the chances of further unsuccessful elections, as elections come to be seen as serving the interests of one group, rather than of the whole community.

### *1.3. Institutionalisation*

Effective elections also require institutionalisation. An electoral process consists of a complex set of procedures. Organisational factors, such as campaign regulations and voter registration procedures, have the potential to affect voting patterns. After polling, distributions of seats in parliament and positions in government are at best only an approximation of distributions of voter preferences. Different rules and procedures may consequently tilt the balance of power in different directions.

In such cases, it is frequently impossible to state that one outcome is "more democratic" than another. For example, proportional representation and first-past-the-post formulas for organising

voter representation deliver radically different outcomes from a given set of voter preferences, yet both systems are successfully used by different democracies around the world. Institutionalisation can resolve disputes over the most appropriate form of the election, by awarding the sanction of custom to a particular set of procedures.

O'Donnell defines an institution as “a regularized pattern of interaction that is known, practiced, and accepted (if not necessarily approved) by actors who expect to continue interacting under the rules sanctioned and beckoned by that pattern” (1996:36). Institutions constitute the foundation of political stability as disputes over their form are marginalised. They are “unquestioned regulators of expectations and behaviour,” able to exert power over the actions of individuals because they impose a particular common agenda or framework upon all who come into contact with them (O'Donnell 1996:36). They permit a shift of emphasis away from the anomalies and arbitrary aspects of complex electoral processes, allowing greater focus on the political content of the programmes of the competing parties.

#### *1.4. Independent and Effective Agencies*

Institutionalisation is assisted by the activities of state agencies. The agency responsible for directing the election must be seen to implement procedures correctly, in order for patterns of expectations to take root. Effectiveness requires material resources, trained personnel and a functioning infrastructure. The activities of agencies in implementing processes must be observable and predictable, in order to minimise disputes over organisational matters and contribute to the authority of the election result. Agencies for the implementation of elections must be supplemented by effective agencies for quickly mediating disputes over election implementation, to prevent the escalation of conflicts over organisational issues.

In addition, wider agencies effectively guaranteeing safety and security to parties, campaigners and voters are required to ensure that the election does not disrupt the wider context of community life. Subjugating the electoral process to community norms of behaviour helps to ensure that community cohesion is maintained despite the emergence of opposing political camps.

Effective implementation of elections further requires a separation of the organisational sphere from the party political sphere. This promotes the conception that the election serves the whole community, rather than promoting one section of the community at the expense of another.

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## **2. Electoral Conflicts in Cambodia: An Analytical Framework**

Conflicts of interest are a naturally occurring phenomenon in a complex society. Elections are intended to mediate such conflicts of interest, by promoting participation in the formation of public agendas. This promotes both adherence to the community and the conviction that individual and community goals coincide in the long run. By this means, individuals are encouraged to agree to subordinate their own immediate interests to the good of the community, in return for assuring them a hearing for their grievances and the opportunity to continue to attempt to influence the community agenda.

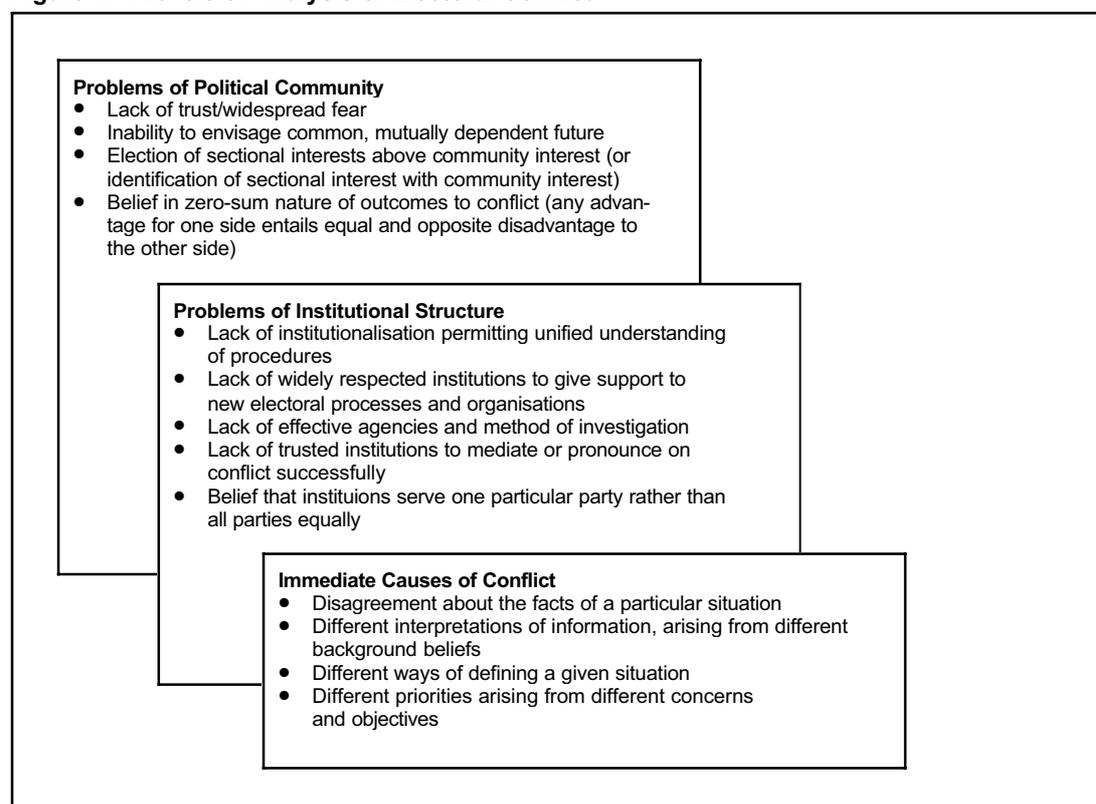
Electoral conflicts form a distinct, and more problematic, category of conflict, in that they are conflicts which undermine the foundations for democratic conflict resolution. For the purpose of this study, an electoral conflict is defined as:

A situation where an individual, or association of individuals, believes that its rights and freedoms in the sphere of democratic participation are being intentionally or inadvertently infringed or prejudiced by the activities of other individuals or organisations.

Such conflicts increase distrust, and may promote the view that elections are biased in such a way as to preserve the dominance of one group. Where highly divisive conflicts occur, the sense of equal participation in the formation of public agendas is undermined on the part of one party, leading to its

alienation from the process and from the community. In such cases, subordinate individuals or groups view themselves as oppressed or marginalised by the electoral process, rather than liberated and empowered by it. They may come to see their long-term interests as distinct from those of the dominant group which is believed to control the elections, and may thus be unwilling to subordinate their immediate interests to the authority of the electoral process.

**Figure 1.1. Levels of Analysis of Electoral Conflict**



Electoral conflicts can be viewed at a number of levels, as illustrated in Figure 1.1. The most basic level is the conflict itself, the claims and counter-claims which comprise it, the cause of the disagreement, and the actions which are taken in support of them. Analysis of the kinds of conflicts which took place during the 1998 election suggested four broad categories of causes of electoral conflicts at this level:

- Disagreement about the facts of a particular situation;
- Different interpretations of information, arising from different background beliefs;
- Different ways of defining a given situation; and
- Different priorities arising from different concerns and objectives.

Many conflicts in 1998 emerged from a coincidence of more than one of these causal factors.

These causes of electoral conflict are closely linked to wider problems in the Cambodian polity. For example, disagreements about the facts of a particular event or situation are promoted by weaknesses in the institutional structure—a lack of institutions, such as a trusted investigative press, an effective and well-trained police force, and an independent court system to pronounce with authority on disputed questions. Such institutions can also contribute to the formation of a public consensus on the interpretation of information.

Similarly, disagreements of fact or interpretation may arise from problems of political community, such as the level of distrust between different parties. The unwillingness of particular groups to

separate their own sectional interests from the interests of the community leads to rigid and, often, mutually exclusive frameworks of interpretation. Suspicion encourages a refusal to alter one's perspective.

Consequently, a second level for the examination of election conflicts is the level of political institutions. While particular incidents gave rise to conflict, it may be argued that weaknesses in the institutional structure of the Cambodian polity made it more likely that such conflicts would escalate. Institutional weaknesses include lack of institutionalisation of elections. As the first democratic multi-party election organised by Cambodians for more than three decades, the 1998 election required establishment of new laws, rules, organisations and agencies at national, provincial and commune level. The complexity of this task, unleavened by weight of custom, entailed great potential for electoral conflicts, as political parties scrutinised every aspect of electoral procedure and bargained for alterations.

This problem was compounded by a wider lack of democratic institutions in the Cambodian polity as a whole. Cambodia possesses few state or non-state agencies which command the allegiance of the entire political community. The courts, police, military, civil service, education system, and even the National Assembly have been criticised by different groups as serving the interests of particular political parties rather than the interests of the whole community. The lack of wider institutions to lend support and legitimacy to electoral agencies was a significant problem in the election process.

Problems of institutionalisation arise from a combination several factors. First, there has been insufficient time for the new duties and responsibilities of state agencies under the 1993 Constitution to become clearly understood and widely disseminated. This is compounded by technical problems, such as lack of training, resources and infrastructure to facilitate implementation and control, and political problems, such as the lingering perception by some sections of the community that the state apparatus is politicised, abusive and corrupt. A comprehensive analysis of the nature and causes of these problems and perceptions is beyond the scope of this study, but where such issues have a bearing on the particular conflicts studied they will be discussed further.

At the third level, conflicts can be viewed as issues of political community. The two sides which engaged in conflict during the Cambodian election comprised parties which had fought one another in the civil war of the 1980s, and in some cases, the 1970s also. Although a certain degree of mixing and realignment has occurred since 1993, and particularly in the aftermath of the fighting in 1997, two core groups continue to reflect the civil war alignments. These are the Cambodian People's Party (CPP), which is directly descended from the 1980s State of Cambodia regime, and the FUNCINPEC-Sam Rainsy Party alliance, which is descended from the FUNCINPEC of the 1980s border resistance. In 1998, FUNCINPEC and the Sam Rainsy Party (SRP) competed in the election under the banner of the National United Front (NUF), along with the smaller Grandfather Son Sann Party (formerly the Buddhist Liberal Democratic Party (BLDP), which has since merged with FUNCINPEC) and the Cambodia Neutral Party. The distrust between these two groups remains deep, particularly since the failure of the 1993–97 CPP-FUNCINPEC coalition, which ended in armed confrontation between military units aligned with these two parties in Phnom Penh in July 1997.

The failure of Cambodian political parties to perceive themselves as inextricably bound together as equal participants in a single community may encourage conflict. This encourages attempts to escalate, rather than defuse, minor conflicts, on the part of those with a vested interest in change. These efforts are met by attempts to ignore and/or de-legitimise such complaints and interests on the part of those with a vested interest in the status quo.

Democratisation theorist Sartori comments:

“If there is consensus at the community level on fundamentals—and especially on the rules for resolving conflicts—then people may well conflict over policies. But this is so because

consensus on fundamentals provides the self-restraints that make conflict *less than conflict*" (1997:63).

There is little consensus on fundamentals between the Cambodian political parties. The major political parties are the strongest and oldest features of the Cambodian political landscape. They are highly polarised, and heavily affected by the political turmoil of the past 30 years. Two interviewees, the first associated with a party in the NUF, and the second associated with the CPP, ascribed election conflicts in 1998 to the polarisation of society and the dominance of political movements over state agencies during the years of war:

"The root cause of the problem is a mentality of suspicion left over from the Democratic Kampuchea era. [At that time] even children were taught to report to the 'organisation' about their parents. Distrust and suspicion also dates back to the time of starvation, when people had to compete to survive. And then, during the Vietnamese occupation, the country was split between those who fought the Vietnamese and those who brought them in."

"...the morality of society decreased [during the war].... Teachers, who were real intellectuals before they joined the leftist movement, became detention centre chiefs. They killed people gratuitously. Even monks or abbots became security chiefs—this affected the morality of society. [Today's problems] stem from this background and this atmosphere. The solution is education and law."

Although there is broad agreement among interviewees that war has severely damaged the sense of political community in Cambodia, different perspectives on the recent past are central to ongoing division and polarisation. For the CPP, the 1980s represented a period in which the party worked tirelessly to rebuild a liberated Cambodia. The myth of 7 January is central to the party's identity and cohesion.<sup>2</sup> The emergence of a multi-party system comprising former battlefield enemies following the Paris Peace Agreement is viewed as a sacrifice made by the CPP in the national interest. The hardships of the 1980s are perceived as emerging from the association of the opposition parties with the Khmer Rouge; concern to prevent a return to this situation was a key theme of CPP propaganda in 1997.

For the opposition, by contrast, the 1980s represented a period of foreign occupation, destruction and suffering. The signing of the Paris Peace Agreements, rather than 7 January 1979, represented the birth of a new era in Cambodia, in which the destruction caused by the CPP and its allies could be repaired.

These markedly different interpretations of the past prompt different perceptions of the legitimacy of one another's claim to participate in Cambodian politics. The conflicting labels of "liberator" and "puppet," "resistance" and "insurgent" continue to resonate between the parties, and to dominate political propaganda, particularly during times of crisis. The differing concerns of the parties with "terrorism" and "banditry," and foreign immigration and invasion respectively, are intimately linked to their different histories. These different histories retain a strong influence on Cambodian politics, impeding the ability to visualise and move towards a common future, in which all parties live together within the country.

Slow progress has been made towards delineating the shape of a polity in which both government and opposition parties could work together. The collapse of the 1993–97 "power-sharing" agreement, which saw the state administration split along political lines, caused a return to fighting. The new government and opposition have yet to establish the terms of their relationship. This is problematic in establishing the mutual interest of all parties in successful elections. It is difficult to persuade losing parties that acceptance of defeat is in the party's best interest in a situation where the role and contribution of a defeated party is unclear. In particular, in situations where the security

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<sup>2</sup> Vietnamese troops captured Phnom Penh on 7 January 1979, driving out the Democratic Kampuchea regime of Pol Pot.

of a defeated party is believed by party members to be in question, a survival imperative prevents acceptance of defeat.

In Cambodia the parties have little sense of one another's commitment and allegiance to the political community. Rather, the parties continually represent each other as imminent threats to national security, and attempt to use elections to oust one another decisively from the national arena. The propaganda of party-aligned Khmer-language newspapers suggests that these attempts emerge from distrust and fear of one another's intentions to play political "tricks," to harness foreign power to achieve their aims, and to secure, if possible, the assassination of opponents, as well as from belief that the policies attributed to their rivals would bring national disaster.<sup>3</sup>

In addition, the different positions of the two parties lead to different perspectives on questions of electoral organisation. The dominance of the CPP, and the inability of the former resistance parties to gain much control of government policy since 1991, have led to a situation where interests on the part of the CPP in continued dominance are best served by inertia. A rational strategy for the CPP to follow in any particular situation of conflict is therefore to do nothing and to refuse to discuss the issue. For the opposition parties, by contrast, the pursuit of change requires the mobilisation of any available power resources, including international power resources, in an attempt to force a response from the CPP. Attempts to resolve problems together in a cooperative manner have not been favoured as a strategy by either side, except where international mediators have been involved.

Consequently, the two sides view elections from different perspectives. According to one school of thought, the 1998 election, like the 1993 election, represented a potential landmark in Cambodian history, signalling the beginning of a new era of accountability, transparency and popular participation in Cambodian politics. In view of the scale of the violence suffered by all Cambodians during the years of war, it is considered vital, from this perspective, that these electoral processes are implemented properly. "Free and fair" elections can install a legitimate government whose democratic authority will enhance and facilitate the process of good governance in the national interest, which is essential given the ongoing suffering of the Cambodian people from the effects of poverty, hunger, disease and violence.<sup>4</sup>

From this perspective, free and fair elections are viewed as vital to the solution of problems which threaten Cambodia's survival, while flawed elections are seen as perpetuating or even increasing Cambodia's problems. From this perspective, the importance of elections, and in particular the importance of the way in which they are implemented, in itself promotes the likelihood of conflict over the nature and implementation of electoral procedures. To the extent that the concept of a "free and fair election" is ill-defined within the political community, reiteration of this demand is likely to be conflictual. Although there is widespread agreement that democratic reforms are essential to a variety of aspects of political, social and economic development in Cambodia, the belief that free and fair elections are a precondition for effective reform efforts risks imposing stalemate at the outset.

From a different perspective, elections represent necessary but insufficient steps in a long and complex process of democratisation. From this viewpoint, the battle-scarred nature of Cambodian

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<sup>3</sup> The published election manifestos of the three major parties, the CPP, FUNCINPEC and the SRP, contained few overt differences. The propaganda of these parties, by contrast, continues to reflect the two major issues which fuelled the civil war of the 1980s. FUNCINPEC and the SRP focused on the alleged influence of Vietnam over the CPP—a reference to the assistance given by Vietnam to the CPP leaders in defeating the Democratic Kampuchea regime. CPP propaganda, particularly in late 1997 and early 1998, focused on alleged links between FUNCINPEC and the remnants of the "Khmer Rouge," which were still fighting the government from strongholds in the northwest of Cambodia in 1997–98.

<sup>4</sup> For this reason, questions of freedom and fairness were emphasised repeatedly by the NUF parties during the election period. Yet the lack of recent electoral experience and tradition in Cambodia entailed that the exact definition of a "free and fair election" remained elusive. Different ways of defining fairness in particular underlay many of the conflicts examined in this study.

society is seen as undermining the prospects for efficient conflict resolution by means of democratic processes. Elections form one aspect of a wider rehabilitation, which must also include a restoration of wider moral, spiritual, and social norms before democratic processes can really become effective. Consequently, from this perspective, a priority must be to ensure that flawed elections do not detract from the stability necessary to facilitate wider imperatives of national reconciliation and socio-economic development which will in the future support the institutionalisation of political processes.

The danger inherent in this view is that it encourages a de-prioritisation of measures to improve elections, and a postponement of the difficult decisions which must be made within parties to render elections more authoritative. Although socio-economic and technical factors are important, conflict resolution also requires a political commitment to the electoral process. An apparent prioritisation of the socio-economic perspective can be used as a smokescreen to mask reluctance to take the necessary and difficult political steps. To the extent that some groups perceive dominant groups to be dragging their feet, such policies are likely to increase distrust and to undermine attempts to boost the unity and stability of the political community.

The contradictory policy recommendations prompted by these different perspectives, and in particular, the claims that espousal of different perspectives was a matter of convenience rather than conviction, were central to the conflicts that occurred in 1998. Different views of the role and function of the election, and the conflicts that arose from these, were a symptom of a wider lack of common purpose within the political community.

The analytical approach adopted by this study is to examine in detail the emergence and progress of particular disputes which affected the 1998 election, and to identify causes in the immediate environment, in institutional structure, and at the level of the political community. Analysis at different levels generates different policy recommendations, but these recommendations are not mutually exclusive. Rather, the range of policy recommendations reflects the different levels at which elections operate—as immediate arbiters of conflicting claims to power and representation; as regulators of political institutions; and as unifying events reconciling a political community on a common territory and with a common future.

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## Methodology

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This study is based upon data from three major sources: research interviews, documentary evidence from a variety of sources, and the observations and experiences of the researchers, both of whom were active observers of the 1998 election.

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### 1. Research Interviews

The first major source of data was research interviews, conducted with 43 interviewees, from non-governmental and state agencies and from political parties.

#### 1.1. NGO Interviews

Among the interviewees were 24 representatives of Cambodian NGOs in Phnom Penh, most of which were directly involved in electoral activities. NGOs were chosen from the Cooperation Committee for Cambodia yearbook for 1998, and were limited for reasons of time and resources to those with headquarters in Phnom Penh. Difficulties in finding and contacting NGOs meant that the sample selected is probably biased towards NGOs with telephones, and which have not recently changed their telephone number. Some NGOs which had changed their phone number, or had only listed addresses in the directory, could not be found either through enquiry or after searches of the area indicated in the directory.

The sample was chosen to reflect a range of NGO activities. The NGOs were divided, for the purpose of sample selection, into the following categories: promotion of human rights and democratic principles (four NGOs); promotion of professional interests (three); promotion of minority rights and/or welfare (four); promotion of socio-economic development (seven); promotion of the rights and/or welfare of women and youth (five); promotion of religious principles (one).<sup>1</sup> In each category, attempts were made to find NGOs that were members of either the Coalition for Free and Fair Elections (COFFEL) or the Committee for Free and Fair Elections in Cambodia (COMFREL) and had thus participated directly in the election. One NGO from each of the development, women's, minorities and religious categories were selected that were not members of an election monitoring coalition. Twelve of the organisations were also involved in the coalition Campaign to Reduce Violence.

NGO views were seen as important because of the role of observer NGOs in validating and legitimising the electoral process. NGO observer groups in an electoral process act as the watchdogs of civil society, attempting to impose a civil agenda on the questions of justice and propriety in election procedures, and by this means taking these questions out of the sole control of the rival

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<sup>1</sup> Contacted, but unavailable for interview, were two human rights NGOs; two professional NGOs; one minorities NGO and one religious NGO.

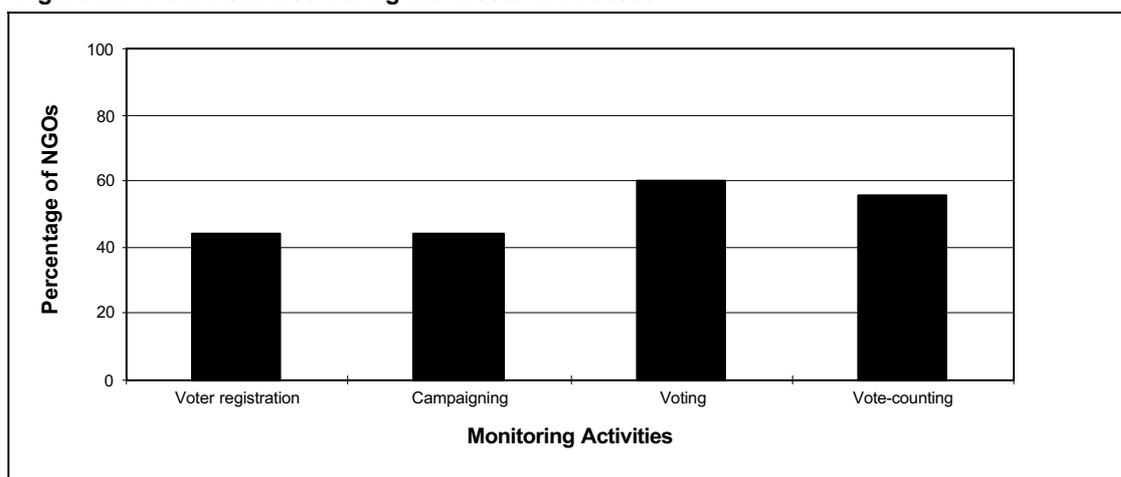
political parties. It is not intended that the views of NGOs should be seen as indicative of the views of wider society. Involvement in the observation process in itself implies that NGO observers have a different perspective on and, perhaps, a different interest in the process, from ordinary voters. Rather, NGOs opinions are seen here to be important due to the particular role of NGOs in acting as a check on the state and the political parties during the election.

Issues on which electoral observer coalition members were unable to form a consensus are, arguably, issues where electoral authorities failed to demonstrate the correctness of their actions. Issues upon which electoral observers were highly polarised are likely to be issues in which conflicting perspectives exist within a wider sphere than the political sphere. Further research is required to demonstrate how far this polarisation extends to other groups in society, and other areas of the country.

Because of the relatively large number and uniformity of election-related activities of NGOs, a structured interview schedule was constructed and tested to investigate NGO perspectives. The interview schedule addressed four areas. First, it investigated the range and scope of activities and networking pursued by NGOs during the electoral period. Second, it enquired into NGO perceptions and experiences of conflict during the electoral period. Third, it measured attitudes towards different electoral organisations and processes. Finally, open-ended questions were asked to investigate knowledge and expectations of the commune election scheduled for 2000.

When questioned about their activities in relation to the election, almost two-thirds of the NGOs sampled reported involvement by their staff in observing voting, as shown in Figure 2.1. More than half reported staff involvement in observing vote counting, voter registration, and activities during the election campaign. More than one-third had conducted activities to circulate information about the election, to educate voters and to lobby the government and/or the National Assembly over questions of law prior to the passage of key electoral legislation. Other activities in which NGOs were engaged included putting up banners in Phnom Penh calling for non-violence during the election; leading people to register and to vote; participating in the drafting of codes of conduct for electoral participants; offering training to women, local election committee officials and political party activists; and monitoring the activities of political parties after the election.

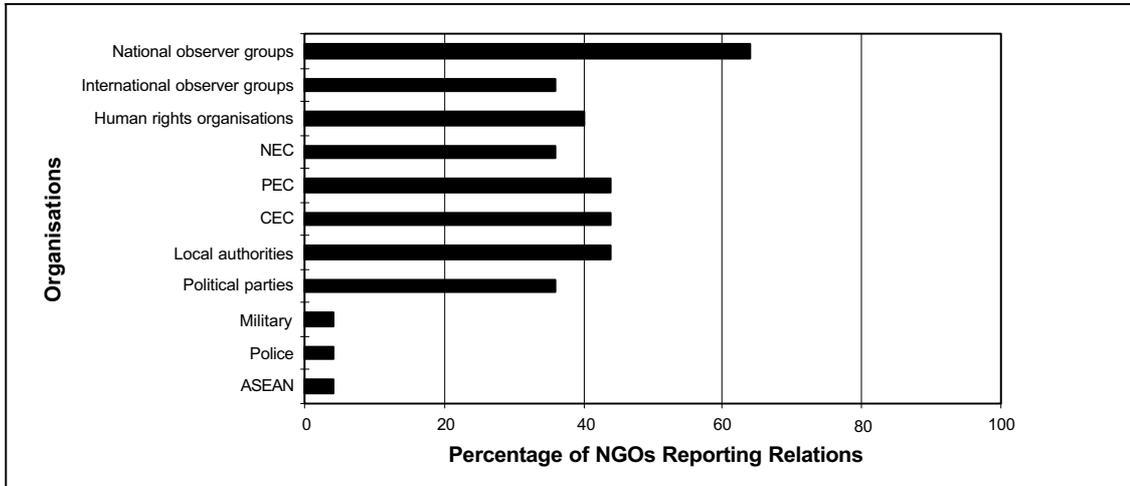
**Figure 2.1. NGO Activities during the Electoral Process**



The NGOs were also asked to indicate the kinds of organisations with which they had contact in the course of carrying out election-related activities. Their answers are represented in Figure 2.2. Most NGOs reported that they worked as a member of a national observer coalition. Almost half reported that they had contact with human rights groups, local administrative authorities and local election

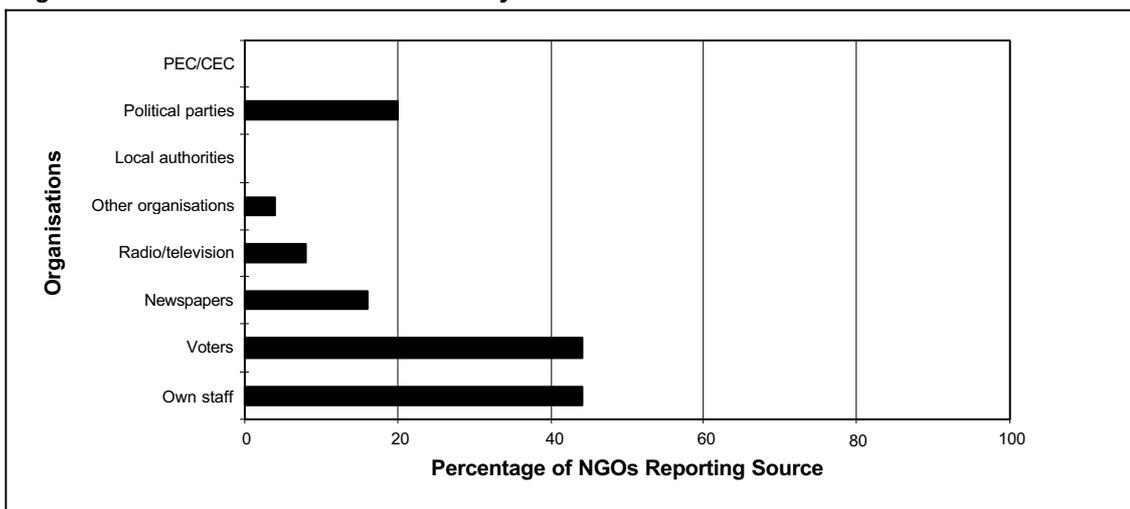
committees in the course of their work. Contacts with political parties, the National Election Committee (NEC) and international observer groups were also common.

**Figure 2.2. NGO Relationships during the Election**



In the course of their activities, NGOs reported that they relied most heavily on information given to them by voters and their own staff in making decisions about situations of conflict, as shown in Figure 2.3. Information also came from political parties, often in the form of complaints to be investigated. Newspapers were also a source of information about conflicts, but some respondents emphasised that they did not rely upon this information without verification from villagers directly involved. Three-quarters of sampled NGOs reported receiving information about conflicts taking place during the electoral period in this way, but only 17 percent reported that they themselves were parties to conflicts with other organisations or individuals during the electoral period (see Figures 2.4 and 2.5 overleaf).

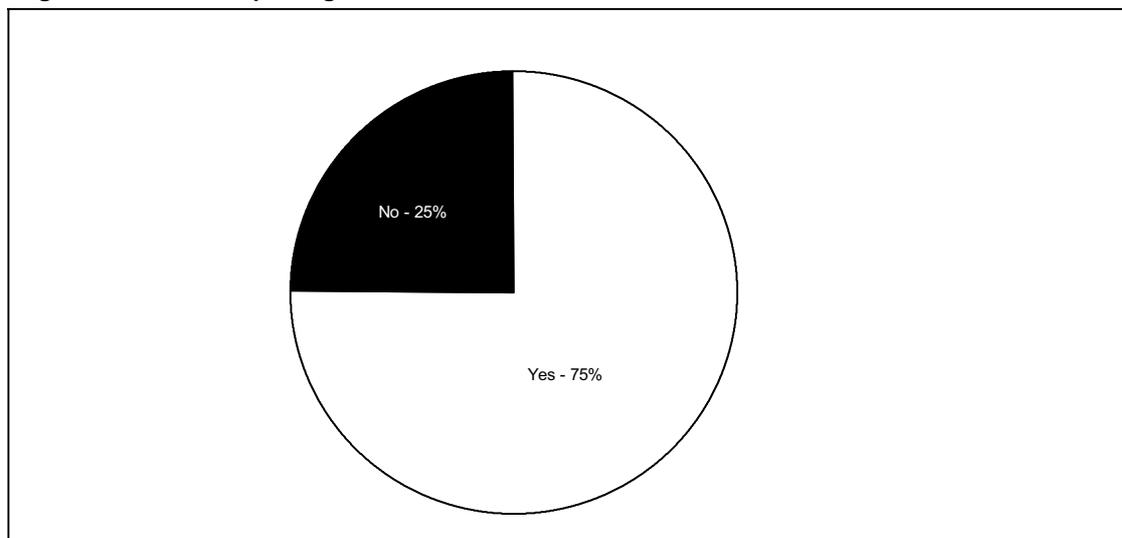
**Figure 2.3. Sources of Information Used by NGOs**



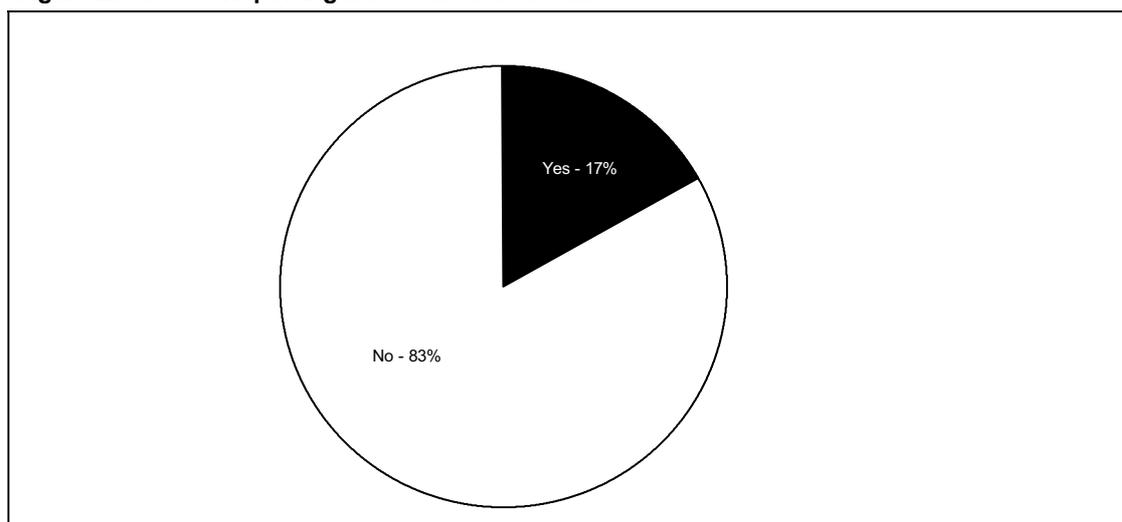
A central focus of the interview schedule was the measurement of attitudes towards specific aspects of the election process. A series of statements was read out to interviewees, who were asked to indicate the extent of their agreement with the statement in percentage terms: 100 percent indicated total agreement with the statement, while 0 percent represented total disagreement. During pilot tests, interviewees were asked to respond in terms of an attitude scale using the terms “strongly

agree—agree—no opinion—disagree—strongly disagree,” but interviewees appeared to find this scale difficult to apply to the statements offered.

**Figure 2.4. NGOs Reporting Awareness of Conflicts**



**Figure 2.5. NGOs Reporting Involvement in Conflicts**



Percentage figures were found to be more readily usable for interviewees to express their ideas, partly because weaknesses in the electoral process were often viewed as temporal or spatial rather than qualitative. For example, in response to the statement, “all parties were able to travel freely to all areas of the country,” most objections did not relate to the degree or meaningfulness of “freedom” in any one time or place. Interviewees rarely commented on the conditions for freedom during the election. Rather, most interviewees suggested that in some areas or time periods parties were free, according to an assumed definition, while in others they were not. Percentages referred to the proportion of time or space in which parties were “free” as oppose to “unfree,” suggesting that most interviewees perceived “freedom” to be a clear, consensual and operational term.

Similarly, questions which did not offer temporal or spatial variations tended to attract 100 percent or 0 percent responses, to indicate disagreement or agreement. Some interviewees used the 50 percent mark to indicate the view that a particular issue varied according to circumstance. For example, on the issue of gift-giving, four respondents stated they agreed 50 percent with the state-

ment “the giving of gifts by political parties to voters is unfair.” One said that they gave this answer because they believed that a direct association between the giving of gifts with soliciting votes was unfair, but that giving gifts without soliciting votes was acceptable. Another said that it was unfair if only one political party had the means to give gifts, but if all parties had the means to do so equally, then there was no problem.

An additional feature of interviewees’ responses to the attitude measurement scale was the observation that interviewees worked from different ends of the scale. While some interviewees offered mainly zeros for positive statements, increasing to 30 or 50 percent in response to issues they received as relatively unproblematic, others offered mainly 100 percent responses to positive statements, dropping to 75 percent in response to aspects of the election which they believed had gone particularly badly.

It is probable that this division reflects a division between those who viewed the election in general as positive, with a few problems, and those who in general viewed the election as negative, with a few good points. Yet, interestingly, the general statement “your NGO believes that the NEC organised a free and fair election” attracted mostly 50 percent responses.

In this report, results are presented in the form of bar graphs. The tendency of interviewees to begin at different ends of the scale indicates that, frequently, results take the form of a J-curve rather than a diagonal slope. The 0 and 100 percent levels are particularly important in indicating overall approval or disapproval. In most cases, a large number of zeros and a low number of 100s indicates general disagreement with the statement, while a large number of 100s indicates general agreement. A high number of 50 percent responses represents agreement that the issue is equivocal. A wide and even spread of results, and, in particular, a high number of zeros and 100s on the same graph, suggests an issue on which interviewees were highly polarised.

### *1.2. Interviews with Representatives of State and Multilateral Agencies*

A second group of interviewees were drawn from various branches of the central state apparatus. Six representatives from the Constitutional Council and the NEC were interviewed as the organisers and arbiters of the electoral process. Two representatives from the Ministry of the Interior, and one from the Ministry of Information, were interviewed to represent the executive branch of government. One senator and three National Assembly members were interviewed to represent the legislative branch. Among these interviewees, five were considered by the researchers to be aligned with the CPP, four with FUNCINPEC, and three with the Sam Rainsy Party. One was considered not to be aligned with any of the three major parties. Three leaders of smaller political parties which were unsuccessful in gaining a National Assembly seat in 1998 were interviewed. Three senior representatives from different branches of United Nations organisations in Cambodia were also interviewed.<sup>2</sup>

Because of the greater variety of activities pursued by this group of interviewees, and the expected greater influence of political agendas on their perceptions of the electoral process, a semi-structured interview technique was adopted, after pilot tests indicated that structured interview schedules were inadequate to capture the full range of experience and perspectives. Semi-structured interviewing facilitated investigation of the differing frameworks and priorities used by these individuals in analysing situations of conflict. Through the use of open-ended questions, it was expected that these frameworks and priorities would emerge more easily. The semi-structured schedule focused on three areas: problems and conflicts experienced in 1998, problems and conflicts expected in 2000, and the perceived importance of the commune election.

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<sup>2</sup> As a percentage of the total number of potential interviewees contacted, this represented an overall response rate of 67.2 percent, with a breakdown as follows: among NGOs the response rate was 83 percent; among electoral organising agencies, 77 percent; among the executive branch, 50 percent; among the legislative branch, 44 percent; and among the international community, 50 percent.

In the analysis that follows, direct quotations are employed to convey the interpretations of the electoral process offered by interviewees. In line with guarantees of confidentiality given to all interviewees, the identity of the speaker is not revealed in these cases, although their relation to the electoral process is indicated where this is considered illuminating.

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## **2. Documentary Evidence**

In analysing the events of 1998, the researchers also used accounts written contemporaneously, in the form of press releases, media reports and internet postings produced by political parties and election observers, both local and international. Also used were accounts produced retrospectively, in the form of reports and reviews. Of particular importance in the latter case were the reports of the NEC, the United Nations Cambodia Office of the High Commissioner for Human Rights (UNCOHCHR), the Office of the Council of Ministers and the three major political parties.

Because interpretations of events associated with the election are highly contested, the researchers have tried to avoid reliance on any single written or spoken account of the electoral process. This study does not aim to provide an authoritative version of the “truth” of any conflict situation. Rather, it attempts to compare the various perspectives from which different groups observed and understood the events of 1998, as a means of gaining a deeper understanding of the conflicts which arose between them. A particular emphasis is placed upon those perceptions which reduced the authority of political processes to resolve or mediate conflicts, or which caused conflicts to escalate.

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## **3. The Researchers' Own Experiences**

Both the researchers had engaged in activities related to the electoral process in 1998. Caroline Hughes conducted research, sponsored by the Leverhulme Trust, into the campaign styles of the different political parties. This research included interviews with party presidents, candidates and commune activists, representatives of international and national observer groups, and demonstrators. Real Sopheap was Deputy Director of the Legal Services Division of the NEC from March to October 1998. She was responsible for recording, processing and investigating complaints from political parties related to the election process.

In preparing this report, the researchers have drawn extensively on material they collected and events they observed in the period May–September 1998, while recognising the subjectivity necessarily inherent in their own relationships with electoral actors and the electoral process.

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## **The Legal Framework**

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An essential feature of a model democratic system is voluntarism. As described in Chapter One, the exercise of authority, as opposed to power, suggests that citizens obey both government and law voluntarily most of the time, because of characteristics they ascribe to these social and political arbiters.

In stable democratic systems, custom is perhaps the most important factor in promoting voluntary ascription of authority to both government and law. In new democracies, other means must be found to invest both the government and the legal system with the authority needed for stability. Although the holding of elections is aimed at investing a new government with authority, other means must be found to invest the legal framework governing elections with the same.

In 1998, the NUF parties voiced a number of criticisms of the legal framework for the election, which in their view rendered the election unfair and, consequently, lacking in authority. These criticisms were sustained throughout the electoral period, and led to the refusal of the NUF parties to accept electoral defeat. In considering these criticisms, the present study seeks not to judge their validity, but to examine ways in which conflict arose out of them, and was either mediated or allowed to escalate.

In this chapter, three disputes that arose regarding the election law, its provisions, and other electoral regulations, are presented. The first is the conflict over the level of vote-counting, a conflict which concerned a particular legal provision that was successfully mediated through compromise. The second, the conflict over the issue of delaying the election beyond the period of time specified by the Constitution, was not successfully mediated. Rather, the will of one side prevailed. The implications of this for the status of the legal framework for the elections are discussed. The third is the conflict over access to the electronic media. Although the latter conflict did not relate directly to a provision in the electoral law, it was intimately connected with questions about the absence of the NUF from the early stages of the election process, questions which also underlay the conflicts over the election law itself. This conflict was partially resolved through the creation of electoral regulations governing the campaign period.

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### **1. Problems of Legitimacy and Legality in Late 1997**

In discussing legal aspects of the election, problems of legality and legitimacy must be separated. These two concepts relate to each other in complex ways. The principle of the rule of law implies that laws must be respected, and that violation of the law is an illegitimate act. At the same time, laws only retain their legitimacy if there is a broad ideological consensus that they contribute to the long-term health of the whole community. Laws which are not perceived as such are labelled oppressive, and are likely to provoke civil disobedience rather than facilitate stability. The task for legislators, therefore, is not only to make laws, but to encourage a community of understanding which perceives such laws as being in the public interest.

Several aspects of the Cambodian political environment make this difficult to achieve. First, a long-standing problem in Cambodian politics has been a so-called “climate of impunity” which is believed by some sections of the community—particularly the NUF parties—and by some international observers to exempt powerful people and government officials from punishment under the law. The term suggests that the law does not operate in the interests of the entire community, but in the interests of some at the expense of others. This perception among NUF members and supporters undermines the authority of the Cambodian legal system to a great degree in their eyes.

This perception combines with more general problems of political community to create a climate of suspicion and distrust within the NUF with regard to issues of law. Incidents of violence in which perpetrators have not been caught, and the awarding of amnesties for those sentenced by the courts, has led to a perception of the politicisation of criminal investigation and judicial review. In this environment, questions of law and questions of legitimacy have become divorced from one another, in the eyes of groups such as the NUF parties.

Such problems are exacerbated by institutional weaknesses, such as the lack of an effective police force, judiciary and court system, with the technical skills and resources to implement and enforce the law effectively and consistently. The difficulties experienced prior to 1997 in forming agencies such as the Supreme Council of Magistracy (SCM) and the Constitutional Council linked the institutional weakness surrounding the legal system with the political conflicts that made political appointments a source of discord and suspicion under the 1993–97 coalition government.

The Constitutional Council is particularly important, since this is the agency responsible for legitimising laws passed by the National Assembly, by pronouncing on their constitutional legality. Repeated complaints between 1993 and 1998 that the lack of a Constitutional Council rendered all laws unconstitutional underlined the shortfall in legitimacy of the legal system resulting from institutional weakness.

Following the fighting in July 1997, the status of the National Assembly itself was subject to conflict. In October 1997, two Cambodian delegations arrived at the opening session of the UN General Assembly in New York, underlining the fact that there were two rival first prime ministers. Each disputed the legality of the other’s claim to the post. Although the validity of the respective claims is beyond the scope of this study, it is nevertheless the case that the existence of competing claims cast doubt on the claim of the National Assembly to represent the entire community, or to legislate in the name of all Cambodian people, at this time.

These wider factors combined to undermine the presumption that legality and legitimacy coincided in the election laws passed by the National Assembly in 1997. The lack of participation by the NUF parties, in particular, was problematic. The National Assembly which passed the Election Law and the Political Parties Law consisted largely of CPP members and former NUF members whom NUF leaders now regarded as being disloyal.

Parties will only accept election results if they perceive the legal and institutional framework of elections as serving their long-term interests. In stable democracies, widespread belief in the legitimacy of parliamentary power means that the fact that a law has been debated and passed by parliament is sufficient, in most instances, to render that law authoritative. A virtuous circle is created, in which debate and passage by parliament legitimates electoral law, adherence to electoral law legitimates election implementation, and lawful election implementation legitimates the debates and laws produced by the new parliament.

In Cambodia in late 1997, disputes over the status of the National Assembly prevented the legitimisation of the Election Law and the Political Parties Law. In this environment, the returning NUF members in early 1998 demanded revisions to the laws. They claimed that the laws:

“...were adopted in the wake of the last July coup d’état in an atmosphere of fear and intimidation, and reflect the objectives of the ruling CPP. These laws contain many provi-

sions which are unconstitutional, undemocratic and unfair and are definitely biased in favour of the CPP.”<sup>1</sup>

This view of the environment surrounding the debating of the law in the National Assembly differed from the view held by the post-July 1997 government. The post-July 1997 government believed that the guarantees of safety given by the government to the opposition parties in October 1997 were sufficient to dispel any lingering fears the NUF politicians may have entertained. The government maintained that NUF politicians were free to return and take their positions in the National Assembly before the debate on the Election Law. They argued that the absence of the parties was a matter of choice rather than a matter of coercion.

This difference in perspective illustrates a common feature of Cambodian political conflicts. Contradictory interpretations of security often feature, with one side claiming that it has attempted to facilitate political freedoms which the other side claims are denied by means of covert methods of intimidation. This is one aspect of electoral conflict which is likely to recur in Cambodia, and is a direct result of the deep distrust which exists between different parties. The problems associated with claims and counter-claims relating to questions of fear and security are discussed in detail in Chapter Five. In the disputes which follow, different analyses of fear were important in explaining the different views adopted by the various parties *vis-à-vis* the legal framework for the elections.

## **2. The Level of Vote-Counting**

The conflict over the level of vote-counting arose directly from the question of interpretations of the level of fear among voters. The NUF parties, in line with their wider beliefs about the nature of CPP governance, believed that the level of fear among voters wishing to vote for the NUF would be significant. Consequently, the level of vote-counting was viewed by the NUF parties as a crucial element of efforts to maintain public faith in the secrecy of the ballot. The opposition argued that if voters were aware that the ballot boxes were to be opened and the ballots counted and scrutinised at the level of the polling station, this would constrain their ability to vote without fear of retribution. Moving the ballots to the provincial office and mixing them together before counting would permit greater confidence on the part of voters that their own ballot paper would never be recognised. By contrast, the post-July 1997 government, focusing on the technical challenge of organising the election, countered that transportation of ballots from voting stations to counting stations raised practical problems.

Leaving aside the question of the validity of the position of either side, the conflict was initially disruptive to the electoral process. The absence of opposition parties from the National Assembly in December 1997 when the Election Law was debated and passed allowed the conflict to fester, without any consensus over the appropriate level of vote-counting being reached. In May 1998, the conflict re-emerged when the NUF parties boycotted a National Assembly vote to pass important amendments to the Election Law, raising the issue of the level of vote-counting as one of their central demands. At this point, the conflict was successfully resolved by compromise between the parties, and the law was amended to place vote-counting at the commune level.

This compromise solution was apparently effective. NGO observers interviewed for the present study, were asked to comment on the statement “voters believed in the secrecy of the ballot.” They generally agreed that there was a high level of faith in the arrangements for preserving confidentiality. Such NUF complaints as did arise over vote-counting in the aftermath of the election did not refer directly to problems arising because counting took place at commune level, rather than provincial level.

This conflict may have had lingering consequences, in encouraging the NUF to press other complaints, or in contributing to an impression that the Election Law, as passed in late 1997, was unfair. In general, this particular conflict stands in stark contrast to other conflicts which sur-

<sup>1</sup> National United Front, “Conditions for Free and Fair Elections,” 17 April 1998, p. 2.

rounded the election. The successful conclusion of this conflict contrasts with the continual resurfacing of other conflicts, in which attempts at mediation were not made.

### **3. The Issue of Delay**

The issue of delaying polling day is an example of a conflict in which compromise was not reached, and which, consequently, undermined the electoral process. It did so in a number of ways: first, it widened the rift between the NUF parties, who called for delay, and other organisations, including some international organisations as well as the NEC and the CPP, which continued to work towards a July 26 date for polling. This exacerbated distrust, and to the extent that international support was sought by both supporters and opponents of a July election, encouraged tough stances on both sides, in an attempt to attract international sympathy.

This conflict emerged from a direct clash of interests, which caused each side to emphasise different questions regarding the role and function of the election. The timing of the election was important in party political terms for both the NUF parties and for the CPP. For the NUF, a delay in the election was vital to their chances to compete on an equal footing with the CPP, given the absence of their leaders from Cambodia following July 1997. The NUF parties argued that they lacked equal access to the national electronic media during this time, and that their internal networks had faced problems of intimidation and violence. For the SRP in particular, delay would have boosted its electoral prospects. The SRP had faced difficulties in establishing a network of party offices outside Phnom Penh prior to July 1997 because of legal confusion surrounding the party's status and rights to organise.

From its earliest days as the Khmer Nation Party (KNP), this party had faced challenges over the right to use the party name. Such challenges, common in Cambodia, resulted from internal splits which led to the existence of two rival parties each claiming authenticity. To avoid further problems, the party changed its name to that of its leader, and became the SRP in early 1998.

FUNCINPEC had faced similar problems. Since early 1997, the party had split several times, causing similar disputes over the FUNCINPEC name. Although Prince Norodom Ranariddh, leader of the party in 1993, retained the party's name, he lost the post of first prime minister, and faced criminal charges on various charges related to the July 1997 fighting. These charges were resolved by a trial and subsequent amnesty in March 1998. Until receiving an amnesty, Prince Ranariddh was threatened with arrest if he returned to Cambodia.

For ordinary FUNCINPEC members, the months following the July fighting were also difficult. The defeat of FUNCINPEC loyalists in the military, and the retreat of a remnant force to the northwestern border village of O'Smach, was accompanied by the violent deaths of more than 80 party members in different parts of the country.<sup>2</sup> In this atmosphere, and with most of the party's remaining leaders absent from Cambodia, mobilising the party's local network in preparation for an election campaign was difficult.

For both FUNCINPEC and the SRP, then, more time to organise was essential if they were to contest the election to the fullest extent. At the same time, the situation of Cambodia in the aftermath of the July fighting needed to be resolved as rapidly as possible for constitutional as well as for financial reasons. The Constitution required that a new National Assembly be sworn in by 24 September 1998, with the possibility of a 12-month extension to this deadline if there were pressing security concerns. The post-July government was reluctant to invoke the 12-month extension, given international pressure for rapid elections to resolve questions of international recognition. The July fighting had disrupted foreign aid flows, and denied Cambodia representation at the UN General Assembly, as well as delayed its long-awaited admission into the Association of South-east Asian Nations (ASEAN). The parties that formed the post-July government—the CPP, Ung

<sup>2</sup> Special Representative of the United Nations Secretary-General for Human Rights in Cambodia, "Memorandum to the Royal Government of Cambodia," 13 May 1998.

Huot's FUNCINPEC, and Ieng Mouly's BLDP—argued that these national imperatives were overriding. This stance was consistent with their party political interest in taking advantage of the absence of the NUF parties to improve their own electoral prospects.

On this question no compromise emerged, and the conflict continued to undermine the commitment of the opposition parties to the electoral process. Repeated demands made by the NUF parties on this issue met with little response from the post-1997 government, which viewed the NUF as possessing limited bargaining power on this issue. Comments made by then-Second Prime Minister Hun Sen on this issue to the newspaper *Rasmei Kampuchea* suggest the way in which the conflict was perceived at the highest levels of the post-July government:

“H.E. Hun Sen... said that if that group of a few people did not participate in the elections, did they think that the people going to vote should wait for those few individuals? More than 30 parties have come forward to register, should they all wait for those few people to decide to follow the official path that they previously wanted, that the international community wants? [Hun Sen] added that he did not believe that the international community and the European Union, that have given a lot of material aid to Cambodia for the election, should take that aid back because of a few people.”<sup>3</sup>

According to this report, from Hun Sen's perspective the issue was described as a conflict not between the government and the opposition, but between the government, the people and the international community on the one side, and a “few individuals” on the other. The small number of NUF parties, compared to the number of other parties that had registered for the election, was seen to de-legitimise the NUF parties' claims.

On the basis of their position that the NUF parties possessed no special bargaining rights or veto over the electoral process, the post-July 1997 government did not discuss the issue of the time delay directly with returning politicians, and no compromise or accommodation was reached on this conflict. International donors, anxious to see the *status quo ante bellum* restored in Cambodia, also pressured the NUF parties into remaining engaged in the process. Consequently, the question of the time delay was not resolved before the election, despite NUF threats to boycott.

On the question of threats to boycott, the NUF were also seen as occupying a weak position. In the newspaper interview cited above, then-Second Prime Minister Hun Sen commented:

“Actually, that group will change course and come back to the original framework, because if they do not participate in the elections at the time when the election process takes place, this action will mean that they lose everything.”<sup>4</sup>

Although this prediction proved to be correct for the pre-election period, it lost its force once the elections were over. Electoral defeat removed the imperative for the NUF parties to cooperate, and their long record of previous complaints over the fairness of the election provided them grounds for denying the authority of the election result.

Following the election, the bargaining position of the NUF parties also changed. As Hun Sen had predicted, the relative bargaining positions of the parties before the election entailed that the NUF parties participated under protest. After the election, by contrast, the number of votes cast for the NUF parties and the number of people attending demonstrations indicated that the NUF had retained the support of sufficient numbers of the population to make their acquiescence necessary for governance to proceed. The failure to gain recognition of the authority of the election from these parties before the election delayed the conflict rather than resolving it. The significance of this problem is indicated in the level of disruption to governance that the conflict engendered.

<sup>3</sup> “A Group of Opposition Parties Boycotts the Election,” *Rasmei Kampuchea*, 19 May 1998, p. 1.

<sup>4</sup> “A Group of Opposition Parties...,” p. 1.

An NEC organiser interviewed for this study emphasised the need for compromise to resolve conflicts adequately:

“It was a political problem—the opposition contested that the NEC should delay. The governing party said they should have the election at any cost. It pulled the NEC apart. The NEC had to go one way, with the law. And the dominant political party wanted the election on 26 July. It is very important to have compromise from the political parties. We are not biased—we are neutral, we act according to the law. But there must be compromise, consensus between the political parties. Conflict resolution requires the input of all parties.”

This conflict indicates the importance, for stability, of securing consent to legislation and of a basic consensus on the fairness of elections. One party or group of parties may have the requisite bargaining power to impose its own view of the most appropriate arrangements. This is not an adequate substitute for efforts to forge a common view of the usefulness of electoral arrangements in fostering the long-term interests of all parties and all sections of the community. Rather, the imposition of arrangements viewed as unfair and exclusionary by one section of the community is likely to exacerbate distrust.

Such questions exemplify the dilemma posed to election organisers in an environment in which political community is lacking. The difficulty of gaining a consensual approach to any set of arrangements could result in an indefinite postponement of elections. The insistence on holding elections at a particular time could entail a worsening of political relations. In the case of 1998, the particularly tense atmosphere following the military conflict of July 1997 intensified this problem. Early efforts undertaken in periods of relative political calm to promote a common understanding of the requirements of future elections can assist in laying the groundwork for agreement on future electoral arrangements.

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#### **4. The Conflict over Access to the Electronic Media**

Between July 1997 and July 1998, the conflict over access to the electronic media centred on claims of biased news coverage of the different political parties by various media organisations. There were three main blocks of media organisations operating within Cambodia at this time—state television and radio; private television and radio; and the Western-sponsored Khmer-language services of Voice of America (VOA) and Radio Free Asia (RFA).

Availability of information was not a contributory factor to the emergence of conflict in this area. The media is inherently public, and authoritative surveys of electronic media broadcasts were conducted by international organisations, including the Special Representative of the United Nations Secretary-General for Human Rights in Cambodia, Thomas Hammarberg, and UNCOHCHR. These suggested that throughout the period of the election campaign, state radio and television news programmes continued to give more time to the activities of the CPP than to the activities of the NUF parties. This trend was repeated on private television stations.

The UNCOHCHR monitored the air-time given to different political figures and parties in news broadcasts on Cambodian television and radio in the months before the elections, and found vast inequalities in coverage. During the month of May, UNCOHCHR reported, Hun Sen appeared on state radio and television (TVK, TV3 and TV5) 170 times, compared to five appearances each for Prince Norodom Ranariddh and Sam Rainsy. In June, the figures were 186, 17 and 12 respectively. On private television, disparities were also noted. In the first two weeks of July,

the UNCOHCHR reported, the CPP was featured 446 times on private television news, compared to six times for FUNCINPEC and nine for the SRP.<sup>5</sup>

The NUF parties complained that this adversely affected their opportunity to participate equally in elections. Alleged exclusion from the electronic media was one of the reasons put forward by the NUF parties for their threat to boycott the elections. Yet the CPP and the Cambodian government denied that such exclusion took place.

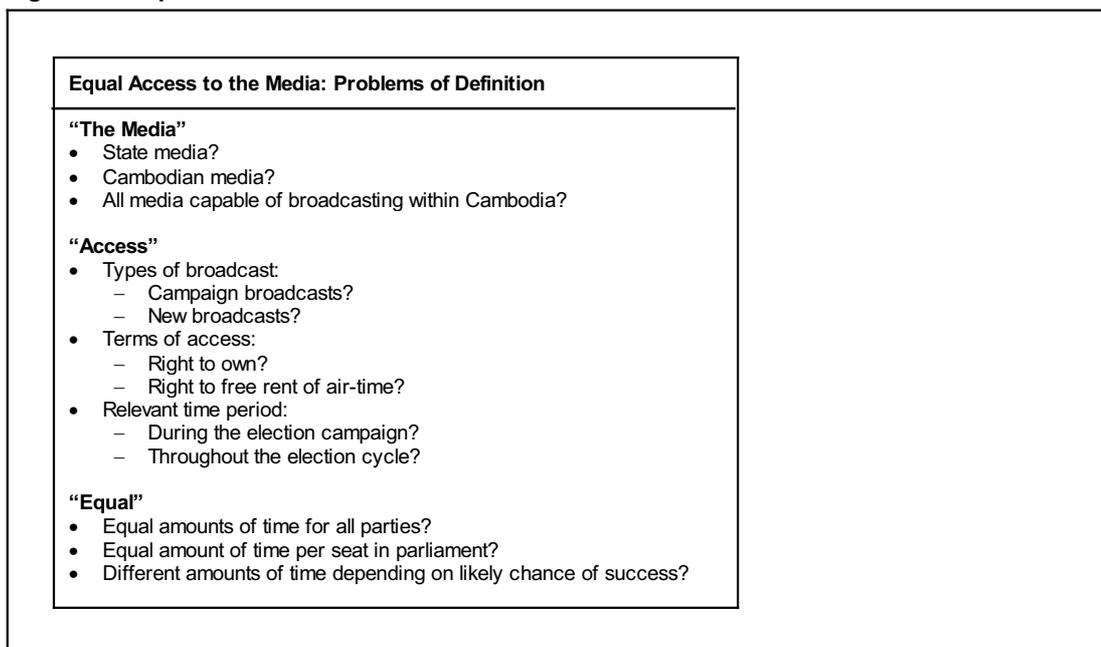
A senior Ministry of Information official interviewed pointed to the existence of radio stations owned by non-CPP parties. He mentioned radio stations such as that belonging to the Beehive Social Democracy Party, broadly sympathetic to the NUF though not a member of the alliance, and another radio station which belonged to FUNCINPEC prior to the July fighting, the political status of which was later unclear. In particular, this official noted, the opposition parties enjoyed the support of two foreign radio stations, VOA and Radio Free Asia, which had not been included in the UNCOHCHR survey:

“The opposition parties have six radio stations. Beehive is opposition, and 90.5 [KHz] belongs to FUNCINPEC. After the July events, the Ministry gave it back to FUNCINPEC, but the staff didn’t support Prince Ranariddh. So we gave one radio [station] to FUNCINPEC, 90.5 KHz, but they preferred to use VOA and Radio Free Asia because those have powerful transmitters and they can be heard over a long distance.”

Emphasis on the powerful reach of the two foreign stations underlined the fact that, via these stations, NUF propaganda could penetrate the whole of Cambodia.

One aspect of this problem, then, was the definition of the term “electronic media.” The NUF parties, international agencies and local NGO observer groups understood the electronic media to mean the Cambodian electronic media. The Cambodian government and the CPP by contrast, understood electronic media to mean all radio and television stations capable of transmitting broadcasts into Cambodia. Using these different definitions, radically different conclusions were reached by each side regarding the respective level of access of each party to broadcasting time. The contrasting definitions are illustrated in Figure 3.1.

**Figure 3.1. Equal Access to the Media**



<sup>5</sup> Thomas Hammarberg, “Report of the Special Representative of the Secretary General for Human Rights in Cambodia on Access to the Media,” 25 June 1998, p. 2; “Media and the Elections: Updated Statistics,” 23 July 1998.

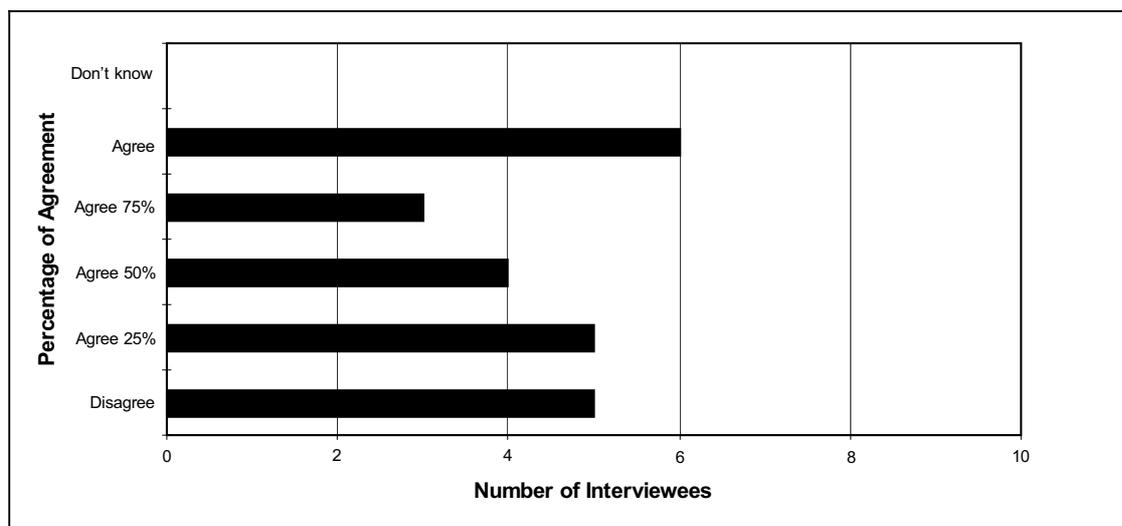
A further element of this conflict was a difference in perceptions of the relevant time period. The NUF parties argued that the lack of coverage of their activities during the months before the election campaign began made it difficult for them to compete for votes equally. A senior COMFREL member also expressed concern over perceived imbalance in the period leading up to the election campaign. The Cambodian government, by contrast, suggested that the only time period relevant to the election was the period of the election campaign itself. During this period, five-minute slots were allocated equally by the NEC, while the private media were banned from campaigning on behalf of political parties.

The allocation of equal access to broadcasting time by the NEC muted complaints to a great extent. In part, also, this was a consequence of the increased momentum achieved by the election process as a whole, once campaigning began, and the shift in focus from electoral organisation to electoral participation. Yet the five-minute formula, along with carefully policed question-and-answer sessions, when party representatives were given equal amounts of time to respond to questions of policy, was also clearly intended to address NUF concerns, and to meet one obvious criterion of equity.

Differences of opinion still lingered. The NEC regulations defined “access to the media” as access for broadcasting party campaign material, but it viewed news coverage as separate and irrelevant to political campaigning. Equal time for broadcasting campaign materials was ensured, but the amount of news coverage of each party was not controlled by the NEC and was highly unequal during the election campaign. The NUF parties and international organisations argued, by contrast, that unequal news coverage was likely to influence voters. Consequently, they argued, news coverage affected the ability to compete equally in elections, and should be included in a definition of “access to the media.”

Once again, this is a problem of agreeing upon a common definition of the meaning of “election campaigning” and “media access.” The distinction between election campaign broadcasts and wider broadcasts was raised by some NGO interviewees. Asked to comment on the performance of radio and television, NGO observers were divided in their opinion, with many impressed by the NEC’s handling of campaign broadcasting (Figure 3.2). Those who were critical of the electronic media often spoke of aspects of broadcasting which lay outside the NEC-regulated sphere.

**Figure 3.2. Perceptions of Organisations: Radio and Television Did a Good Job in Giving Information about the Political Parties to the Voters**



A further problem in this respect was the problem of defining “equality.” The NEC and government held the view that “equality” meant equal time for all parties. The NUF parties and some international and NGO observers maintained that such a strict definition of equality was not just in this context, and that those parties which had the most support and were most likely to be included in a new parliament should have the benefit of more broadcasting time.

This conflict exemplifies the problems which arise from a lack of common definitions which can be used to reach a mutual agreement on a “fair” outcome. Fairness is not an absolute value, and can only be defined in relation to wider agreement. The failure to agree on wider frameworks of understanding underlay the failure to agree on a fair allocation of broadcasting time.

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## 5. The Wider Conflict over Broadcasting

The conflict between the Ministry of Information and the opposition parties over access to the electronic media in the run up to the elections was part of a wider contest over the right to broadcast. This conflict began in 1996, when the KNP’s applications for a licence to open a radio station were repeatedly rejected by the Ministry of Information. Perceptions of inadequate access to the electronic media fostered perceptions, on the part of the NUF parties, that their voices were not being heard and that voters were being prevented from having the opportunity to judge them.

Government arguments against awarding a licence to the KNP and, later, SRP were often based on hypothetical constructions of the implications of such an action. For example, a high-ranking Ministry of Information official commented:

“If we let the SRP open a radio station we have to let all [parties], and that is a technical problem. It is also a problem of economics. Among the independent radio stations, if they lose money the quality drops and there can be no educational programmes. We must have educational radio programmes—it is difficult for children to study and they need those programmes. People don’t have many books to read. If there are too many radio stations, we can’t have educational programmes, and then there are problems.”

The ministry has maintained its position unwaveringly from the earliest days of this conflict, and there appear to have been few attempts to find a different framework within which the problem can be viewed. The argument is framed in terms of concern for the welfare of the people. The KNP/SRP, similarly, has maintained the unwavering stance that the ministry’s arguments are simply a pretext for preventing opposition parties from gaining equal access to the electronic media. SRP members back this argument with reference to the unequal news coverage given by state media to opposition party activities.

The issue is an example of a conflict on which there has been no progress in formulating a common framework for action, through discussion, mediation, accommodation or compromise. The conflict simply continues to fester. A brief escalation occurred in May 1998, when the opposition parties put the issue at the centre of a threat to boycott the election. The offer of five-minute media slots to the parties by the NEC was a concession made to the imperatives of electoral campaigning, but the use of this strategy in itself was a signal that in normal times, dominance of the media by the parties of government will continue. Special arrangements for the campaign made no attempt to tackle the roots of the problem.

The wider conflict displays some typical features of conflict in Cambodian politics. First, government resort to technical or welfare concerns to justify inertia in responding to political demands is a feature common to a number of the election conflicts discussed here. The rejection by opposition politicians of the validity of such reasoning, and their claims that such reasoning represents a disingenuous attempt to deny plurality, is also typical.

In adopting these positions, the various parties to the conflict immediately cast the dispute as a zero-sum game. This means that a gain for one side is perceived by both parties as an equal and

opposite setback for the other side, and vice versa. When viewed in this way, both parties perceive no possibility for establishing a compromise in which the interests of both are served to some degree. Accusations of ulterior motivation further strengthen the determination of both parties to avoid retreat from earlier positions, which have been cast, in both cases, as matters of principle. Each party claims to defend the public interest—usually, the CPP portrays itself as defending public welfare, while the NUF parties represent their demands as the expression of a popular cry for freedom. Each party denies the validity and sincerity of the other's stance, and thus fails to acknowledge or address the other's concerns. While issues continue to be cast in these incompatible terms, there is little obvious basis for accommodation.

Second, the conflict over access to the electronic media illustrates the way in which the weakness of political institutions contributes to political disputes. At the root of this problem is the overt bias of most media outlets in Cambodia. The development of a strong, independent, centrist element in the press would render this problem less pressing, as parties could rely on receiving a certain amount of coverage from these newspapers.

A further limitation on the role of the media in Cambodia is the lack of a strong tradition of investigative journalism, due to lack of security and economic resources. Strengthening the ability of newspapers and television and radio stations to send reporters out into the field to find and present information backed by facts and pictures would reduce media reliance on political party propaganda machines. To facilitate this, government officials at all levels, including electoral officials, must be strongly committed to transparency and freedom of information, and the Ministry of Interior and local authorities must guarantee the security of journalists. Once the media is made independent of political parties, conflict over access to the media will no longer be an inter-party issue.

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## Institution Building

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Following the passage of electoral laws, the next task for election organisers in 1997–98 was the construction of the agencies that would implement the election. In a letter to the *Cambodia Daily* dated 29 June 1998, the vice-chairman of the NEC described a “solid record of achievement” in organising the election. In the letter, he focused mainly on the “vast complicated technical operation” with which the NEC was charged, but also added,

“We have learned a lot, including, I hope, to be responsive to the concerns of the community.”<sup>1</sup>

This remark reflects the fact that, on top of its technical tasks, the NEC also faced a difficult political task. In addition to the technical demands of organising and implementing the election, the NEC faced the political task of building its own authority over the process, and of promoting allegiance to the process on the part of political parties.

Success in these endeavours requires possession of at least three major characteristics:

- Technical competence in fulfilling the 500 duties in the election master plan;<sup>2</sup>
- Authority over the political parties and other electoral participants, to enable the election to generate a decisive outcome; and
- A reputation for autonomy from other electoral participants, in order to promote allegiance to the election from the whole community, regardless of group identity or sectional interest.

This chapter begins with a discussion of the technical problems facing the electoral committees, as the background against which the ability of the NEC to meet the other two requirements must be set. The major focus will be on conflicts surrounding the latter two characteristics. Finally, there follows an analysis of the means by which electoral agencies addressed the problems discussed, and the effect of these problems on the ability of agencies to mediate conflict effectively.

To a great extent, the problems analysed here are problems of institutionalisation. Institutionalised electoral procedures in stable democratic societies are hegemonic, in that their authority and elevation above sectional and political interests goes unchallenged. The rejection of election results by the NUF parties in 1998 in itself indicates that electoral procedures in Cambodia are not, by definition, hegemonic.

In Cambodia, the election agencies created in early 1998 faced the difficult task of building their own reputations and authority, without the benefit of time or custom. Under these circumstances, shortfalls are perhaps inevitable, but are also instructive. Given the ability of the NUF

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<sup>1</sup> Kassie Neou, “Money Woes Jeopardize NEC’s Unheralded Achievements,” letter to the editor, *Cambodia Daily*, 29 June 1998, p. 17.

<sup>2</sup> Figure given by Im Suosdei during his presentation at the *Conference on Conflict Prevention in the Commune Election*, Phnom Penh, 16 June 1999.

parties to mobilise thousands of citizens in demonstrations, and their control of 58 of the 122 National Assembly seats following the election, the refusal of these parties to recognise the authority and autonomy of the election committees represented a significant problem for political unity and stability. Consequently, the present study examines the conflicts surrounding the agencies used to implement the election—the NEC, provincial electoral committees (PECs) and commune election committees (CECs)—and the committee of last resort for complaints, the Constitutional Council, to identify reasons for the persistence of NUF criticism of these bodies.

Table 4.1 overleaf lists the main conflicts that surrounded these organisations prior to the elections. This simple chronology shows that a large number of conflicts emerged from the youthfulness of these organisations, and the self-consciousness that surrounded their construction.

In the highly conflictual atmosphere of late 1997 and early 1998, when the legal framework for the committees and staff appointments were decided, the political parties closely examined every aspect of the political landscape in search of bias or unfair advantage. Consequently, every step of the process of creating electoral machinery was contested. Conflicts arose over the means by which these agencies were established, the way in which staff appointments were made, the political orientations of the staff members themselves, and their performance in implementing procedures. The problems associated with these agencies snowballed, as perceptions of illegitimacy at one stage of the process heightened mistrust and suspicion, rendering the likelihood of conflict at the next stage more likely.

The conflicts examined here are as follows:

- Conflicts over the “neutrality” of the NEC, PECs and CECs, which threatened the authority of the electoral committees;
- Conflicts over the relationship between the electoral committees and local administrative authorities, which threatened perceptions of electoral committee autonomy; and
- Conflicts over the mechanism for addressing electoral complaints.

Each of these conflicts was important in setting the stage for the NUF’s rejection of the election results. In each case, the NUF parties claimed that aspects of the electoral organisations were incompatible with a free and fair election. The NUF parties claimed that these shortfalls undermined the legitimacy of the electoral committees to a sufficient degree to justify their rejection of NEC authority.

In analysing these conflicts, the authors take no position on whether the accusations made by the NUF parties were valid. Furthermore, an overall assessment of the quality of the election committees and the scale of their achievements is beyond the scope of this study. NUF complaints are examined here solely for the purpose of explaining the NUF’s rejection of the authoritative nature of the election results, as announced by the NEC, within a conflict resolution framework.

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## 1. Technical Competence of the Election Committees

The NEC’s report on the 1998 election, released after the election was over, emphasised technical questions as being central to the work of the committee. In devising and implementing hundreds of regulations for the elections, and training and supervising thousands of staff, the NEC faced a major organisational challenge.

The NEC received widespread praise from international agencies for its handling of the technical aspects of the election. Reflecting on their own performance in interviews for this study, NEC members also viewed their most pressing problems as related to the short time available in which to organise and train the electoral agency structure, to register and educate voters, to supervise the campaign, and to organise polling and vote-counting.

**Table 4.1. Chronology of Major Conflicts Surrounding the Election Framework (Pre-Election)**

November 1997	COMFREL expresses concern that the lack of investigation relating to events of 30 March and 5–6 July 1997 will “seriously impair the climate needed for free and fair elections.”
19 December 1997	National Assembly passes Election Law
29 December 1997	Chea Chamroeun elected NGO representative to the NEC. COMFREL and COFFEL claim vote was unfair
26 January 1998	National Assembly votes in favour of the 11 nominated National Assembly members to the NEC. NUF politicians in exile and COMFREL claim that the vote is unfair. COMFREL indicates a lack of confidence in the NEC.
March 1998	Recruitment of the PECs by NEC members. COMFREL alleges that the PECs contain too many active CPP members of local administrations.
30 April – 5 May 1998	NUF boycotts National Assembly. NUF parties deny a quorum to convene the National Assembly and pass an amendment to the Election Law delaying the start of voter registration because of the late arrival of EU registration kits. The vote to appoint Constitutional Council representatives is also delayed. The boycott is prompted by NUF demands as follows: <ul style="list-style-type: none"> <li>• ballot counting should be moved from village to provincial level;</li> <li>• the Constitutional Council should be “politically balanced”; and</li> <li>• the election should be delayed to permit an inquiry into membership of the NEC</li> </ul>
5 May 1998	Hun Sen telephones Prince Norodom Ranariddh and agrees to change the level of vote counting from village to commune level, and to balance the composition of the Constitutional Council. National Assembly then passes an amendment to the Election Law to facilitate delay of voter registration. Suggestions of a conflict between Sam Rainsy and Prince Ranariddh over this question.
8 May 1998	National Assembly appoints Constitutional Council members. A shortlist of seven contains four CPP candidates, one former member of the BLDP and two FUNCINPEC members. Three CPP members are chosen.
18 May 1998	Opposition parties announce boycott of the election due to a perceived inequality in access to the electronic media, a climate of intimidation, the alleged stacking of the Constitutional Council by the CPP, and lack of time for reforming the NEC.
21 May 1998	Electronic media guidelines issued by NEC Chairman Cheng Phon—private media will not be permitted to campaign on behalf of any party, but five-minute slots will be allocated to each party during the 30 days of the election campaign.
25 May 1998	FUNCINPEC issues statement complaining of irregularities in voter registration.
31 May 1998	Son Sann indicates that he will not attend the swearing-in ceremony for the Constitutional Council. He and another appointee of the King, Chau Sen Cocsal, raise objections to the way in which appointees of the SCM were selected.
2 June 1998	Constitutional Council appointee Chau Sen Cocsal leaves Cambodia claiming intimidation from government officials.
3 June 1998	First attempt at Constitutional Council meeting fails.
5 June 1998	Second attempt at Constitutional Council meeting fails.
15 June 1998	The third appointee of the King, Pung Peng Cheng, convenes first Constitutional Council meeting and then resigns. Chan Sok is appointed president of the Council.
21 June 1998	SRP holds demonstration “to demand truly free and fair elections.” SRP complaints are: <ul style="list-style-type: none"> <li>• Alleged irregularities in registration, including double registration of some people and refusal to register others;</li> <li>• Allegations that Vietnamese were allowed to register;</li> <li>• Charges of intimidation; and</li> <li>• Claims that ballot papers have been stolen in preparation for political tricks on polling day.</li> </ul>
July 1998	Opposition parties drop boycott threat but continue to “reserve the right to withdraw at any time” and to maintain that the election is seriously flawed. NEC strikes more than 1,700 names from the voting list, many for reasons of nationality.

One member commented:

“We felt a sense of relief and encouragement that we were able to organise [the election] by ourselves. And we were able to meet international standards—we have never been able to meet them before. But there were also limits, because of the time-frame, the lack

of human resources, know-how. Frankly, the NEC was established too late, six months before the election, when the Election Law stipulated it should be nine months before. [From the beginning] the time period was too short. In the final assessment, that was the most difficult challenge.”

Another member echoed this assessment:

“The job of the election was in fact many jobs. People participated all over the country, so there were many tasks. The NEC facilitated all the people who implemented these tasks. In 1998, cooperation in all spheres was good, even though we had only a short time—four months from February to July—this was difficult.”

A third member concurred:

“We needed to have more training for election staff, political agents and voters. But we could do all these things if there was enough time and enough money.”

Time, money and training are the keystones of any complex endeavour, particularly an endeavour so fraught with tension and distrust as a national election taking place in a climate of perceived fear and intimidation.

Some NGO interviewees also raised the question of resources, training and infrastructural problems as inhibiting the NEC’s ability to maintain full power over the election process:

“The NEC lacked resources. They had to beg for money from others.”

“There were not many cases of mistakes [by the NEC]. They had full authority, but it was a new job, so they used only 75 percent [of their authority].”

“The NEC could not provide everything, could not go to the rural areas. So the authorities had to take responsibility for implementing the election by themselves.”

The latter problem was raised by the vice-chairman of the NEC in May 1998. He commented:

“As of today we cannot communicate with Preah Vihear, Ratanakiri or Monduliri. Other provinces can be reached by telephone at some cost, which is not in our budget. But now we try to put some money into it, so that we can cover the telephone costs for them to contact us and ask us mostly technical questions” (Neou 1998:26).

One NGO representative contrasted this weakness with the strength of the CPP network, perceiving the superior equipment of the CPP as being problematic, because it gave the impression to voters that the CPP were more firmly in control of the process than the NEC officials were:

“Officials of the CPP had walkie-talkies to report on the situation. If there were any problems... people heard what they were saying. It seemed like they were the people who knew about all the problems.”

Some NGO observers also commented on the uneven quality of the CECs. One respondent, who had taken part in training sessions for PECs and CECs, drew a connection between the technical competence of local election committees in fulfilling their tasks, and their ability to withstand political pressure:

“We joined in helping to teach the CEC.... There was a lack of ability in the CEC and PEC where we went. They didn’t know about the activities of the election process. In all areas of work, the PEC and CEC were weak.”

Lack of knowledge increased the likelihood that the local election committees would turn to local administrative authorities or political parties for advice or assistance. One NGO observer commented that he had seen counting station officials asking CPP party agents for advice on whether to regard particular ballots as spoilt or valid.

Many NGO observers interviewed regarded technical problems as inevitable given the restricted time-frame available for organising the committees and the election, the lack of experience on the part of electoral organisers, and the highly politicised environment. Government officials emphasised the enormous efforts that had been made to overcome these obstacles. For example, a secretary of state at the Ministry of the Interior noted:

“[Before polling day itself] we did not believe we could organise the elections ourselves.... I met the governor of Banteay Meanchey, and he said that until that time he had not seen any equipment—that was just one week before the election! But still we were able to organise everything.”<sup>3</sup>

The lack of human and material resources and the paucity of infrastructure was a mostly uncontested feature of the environment. Yet technical problems impinged upon electoral conflict in three ways. First, finite resources and a short time span narrowed the range of solutions available for dealing with political problems. Second, trade-offs between technical efficiency and facilitation of political issues were sometimes necessary, and the relative priority of technical and political issues was sometimes disputed. Third, the definitions of problems as technical, rather than political, was sometimes contested.

The NEC referred to the latter problems in a report released after the election, in which it was noted that “political problems caused technical problems.” In the conflicts studied below, political and technical aspects are examined, and possible causal connections evaluated.

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## 2. Conflict over the Neutrality of the NEC, PECs and CECs: Authority Undermined

The 11 NEC members comprised a chairman and vice-chairman, two nominees of the Ministry of Interior, two “Khmer citizens,” one NGO representative, and four nominees of the parties in the National Assembly. In March, before the conflict over NEC composition had been resolved, the 11 NEC members appointed PECs, which in turn appointed CECs. Both parties in the NUF and observer NGOs criticised these committees in the earliest stages of the election process for including too many former or seconded members of the CPP-dominated local administrations.

Claims that the NEC, PECs and CECs were not “neutral” were central to NUF attitudes to the election process. For the NUF, a perceived lack of neutrality on the part of these organisations entailed a lack of “credibility” and consequently a lack of authority. The NUF claimed:

“With the National Election Committee (NEC) indisputably biased in favour of the CPP (there is no opposition party represented in this key body), and with local and provincial election committees controlled by the CPP, the registration, voting and counting processes will be perverted, especially if all these three processes are conducted at the village level.”<sup>4</sup>

A FUNCINPEC press release commented further:

“The NEC must show to the Cambodian electorates its determination to serve national interests by using its mandated power in ensuring that every step of the elections is open, impartial, non-partisan, transparent and accountable.”<sup>5</sup>

Similar charges were also made at an early stage by the largest election observer NGO, COMFREL, which stated that it lacked confidence in the election committees as a result.<sup>6</sup>

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<sup>3</sup> Prum Sokha, presentation at the *Conference on Conflict Prevention for the Commune Election*, Phnom Penh, 16 June 1999.

<sup>4</sup> NUF, “Joint Statement on the Coming Elections,” Phnom Penh, 29 April 1998, p. 2.

<sup>5</sup> First Prime Minister Prince Norodom Ranariddh’s Cabinet, “Elections in Cambodia: By Fair Means or Foul? A Checklist of the Election Process,” Phnom Penh, n.d., p. 2.

<sup>6</sup> COMFREL, “Statement: Pre-Election Assessment,” Phnom Penh, 24 July 1998, p. 3.

Claims that lack of neutrality undermined confidence, credibility, freedom and fairness were common in the period leading up to polling day, and re-emerged afterwards as the basis of opposition scepticism about the election results. Defenders of the election have dismissed such criticisms as being politically motivated. Yet the fact that this criticism emerged as early as November 1997, was consistently argued through to September 1998, and continues to form the basis of proposals for NEC reform, implies that the idea has gained wide enough currency to represent a serious problem, which will need to be overcome if NEC authority is to be more widely accepted.

### 3. Immediate Causes of Conflict

A central difficulty with the conflict over neutrality is the problem of defining “neutrality.” In the Buddhist Institute’s *Dictionnaire Cambodgien*, the word is defined as “being in the middle, representing those in the middle, not entering into any group.”<sup>7</sup> The first two of these definitions are problematic in a political context, where “the middle”—insofar as it can be identified—is itself a political position, and which may be occupied by a political party. The final definition, “not entering into any group,” was more commonly adopted by critics of the election committees. These critics argued that prior or concurrent membership of a political party, or tenure of a post in the local administration, was problematic for neutrality, and criticised alleged nepotism and cronyism in the NEC structure.

During the course of interviews for this study, three kinds of complaint about the neutrality of election organisers were identified, which reflected three different attitudes towards neutrality:

1. A procedural approach—in which complaints focused on the means by which election committee members were appointed;
2. A personal approach—in which complaints focused on committee members’ previous relationships with political parties and supposed continuing allegiances; and
3. An activity-based approach—in which complaints focused on specific activities in which particular individuals or committees were accused of displaying partiality.

The nature of these approaches, and the different response to conflict which each approach suggested, are outlined in Figure 4.1.

#### 3.1. Procedural Approach

Complaints over appointments emphasised either irregularities or the exclusion of certain groups in the procedures for appointing staff. When the NEC was appointed, there was a high level of political turmoil and tension in Cambodia. Between July 1997 and early 1998, the various political parties offered starkly different, and incompatible, notions of legitimacy and authority in Cambodian politics. No community of understanding surrounded the procedures by which the NEC was created. The absence of the NUF parties from the National Assembly further promoted divergent perspectives on the legitimacy of National Assembly decisions taken at this time.

The FUNCINPEC and BLDP party nominees to the NEC were considered by the Norodom Ranariddh and Son Sann groupings within those parties to represent their rivals, rather than emerging from the NUF. A report in the *Phnom Penh Post* at the time repeated allegations made by the parties in the NUF that insufficient time was given by the National Assembly to debate the choices. Protests filed by the self-exiles were dismissed by then-Assembly Vice-President Loy Sim Chheang.<sup>8</sup>

An NUF National Assembly member interviewed for the present study commented:

<sup>7</sup> Chuon Nath *et al.*, *Dictionnaire Cambodgien* (Phnom Penh: Institut Bouddhique, 1967), p. 1688.

<sup>8</sup> Chris Fontaine & Samreth Sopha, “NEC Dominated by CPP, Say Critics,” *Phnom Penh Post*, 30 Jan–12 Feb 1998, p. 3.

**Figure 4.1. Attitudes to Neutrality**

<p><b>Attitudes to Neutrality</b></p> <p><b>Procedural</b></p> <ul style="list-style-type: none"> <li>• Neutrality fostered by absence of irregularities in appointments and inclusiveness of all parties and groupings in making appointment decisions</li> </ul> <p><b>Personal</b></p> <ul style="list-style-type: none"> <li>• Presumption of partiality with regard to individuals with previous ties to a political party</li> <li>• Presumption that voters will believe that the appointment of state officials/CPP members to electoral committees undermines the secret ballot and the consequences of this for the integrity of the election as a whole</li> </ul> <p><b>Activity-Based</b></p> <ul style="list-style-type: none"> <li>• Belief that only the issue of individual performance of election-related tasks is relevant</li> <li>• Belief that individuals carrying out election-related tasks should be presumed innocent unless proven guilty</li> </ul>
<p><b>Implications for Conflict Resolution</b></p> <p><b>Procedural</b></p> <ul style="list-style-type: none"> <li>• Review of appointment procedures, with an emphasis on consultation</li> </ul> <p><b>Personal</b></p> <ul style="list-style-type: none"> <li>• Need to find new pools of human resources who are distant from politics for the organisation of elections, e.g. monks, students (first-tiem voters), retired officials unlikely to re-enter the state administration in the future</li> </ul> <p><b>Activity-Based</b></p> <ul style="list-style-type: none"> <li>• Need to set up transparent procedures for receiving and examining evidence, which can both promote public confidence and protect the rights of the individual official</li> </ul>

“We need to start from the NEC, the way the members were appointed. There was fear and intimidation in parliament. Some people supposed to be representing a party in the NEC were not really representing their party...”

This interviewee explicitly connected the political atmosphere surrounding appointments with perceptions of lack of neutrality on the part of election officials. Some NGO interviewees also perceived these appointments as unfair:

“When they chose members of the authorities to control everything it was not free and fair.... Democratic countries don’t act like this. They choose electoral authorities by election. They elect the president and vice-president. But here the members were just recruited from among their relatives.”

This charge was rejected by the secretary-general of the NEC one year after the elections. He stated that all appointments had been advertised, applications considered and interviews properly held. He commented:

“The selection process was transparent—appointments were not only people who were family members.”<sup>9</sup>

Yet the belief that procedural irregularities in making appointments to the election committees persisted, and were widespread among non-state interviewees, undermining their belief in the neutrality of the election committees. These perceptions on the part of the NUF seriously impeded the ability of the NEC to exert its authority over the electoral process and to gain the cooperation and respect of NUF supporters.

<sup>9</sup> Im Suosdei, presentation at the *Conference on the Prevention of Conflict in the Commune Election*, Phnom Penh, 16 June 1999.

### 3.2. *Personal Approach*

A second, slightly different, complaint focused on previous or ongoing relationships between individual electoral committee members and local administrative authorities or the CPP. Many electoral committee members had previously been members of the CPP, some had been local administrators, and some retained posts in the local administration. There were allegations of close relations between the local authorities and CECs in some parts of the country. This was a criticism accepted by one NEC interviewee:

“The commune authorities supported the CECs. That was a big problem.”

The NUF parties and some NGO observers regarded this as undermining the credibility of the committees as neutral entities, and as imposing a burden of fear on voters:

“People don’t know much about the secret ballot. If the commune chief is on the CEC, they think that maybe the commune chief will know who people vote for.”

NUF parties claimed that a perceived lack of balance in the political loyalties of members of election committees at all levels indicated an intention to use these political loyalties to bias the election. When they decried this alleged lack of balance, they presumed that those election committees that were dominated by former or present CPP members would place loyalty to the CPP above loyalty to the election process. In this context, the quality of “neutrality” is viewed as emerging from the individual’s own relationships and political orientation.

This was a commonly held perception of “neutrality,” shared by a number of NGO interviewees. For example:

“They can’t prepare freely and fairly because they are oriented towards one political party. They can’t wipe their minds clean when they join the NEC.”

Two major forms of solution to this problem were proposed. Some NUF supporters and NGO observers favoured the selection of “neutral people,” with no apparent political allegiance, to serve as electoral organisers. This suggestion reappeared in a summary of proposed amendments to the Election Law circulated by the major observer NGOs, COFFEL, COMFREL and NICFEC, in January 1999:

“In order for the National Election Committee to be fully neutral and independent, the composition of the National Election Committee should be restructured [to] remove the representatives of political parties and the people’s NGO.... The proposed composition of five members will be appointed on the basis of their leadership and professional expertise.”<sup>10</sup>

Others preferred a balance of representatives from different political parties, either to promote overall neutrality as the different partisan positions cancelled one another out, or so that each party’s representatives could act as a watchdog to preclude bias on the part of representatives from other parties. A senior COMFREL member said:

“The composition must be neutral, not representative of parties. Or at least a balance between the ruling party and the opposition. We prefer neutral people, but no party trusts enough neutral people.”

Finding “neutral people” also promised to be a difficult task. One NGO representative suggested the following criteria:

“Non-political and non-partisan. Experienced and skilled. A person who has general knowledge—a little bit of law, management, administration.”

<sup>10</sup> COMFREL, COFFEL, NICFEC, “Joint Statement Related to Electoral Law and the National Election Committee,” 27 January 1999, Phnom Penh.

It is helpful, perhaps, to consider the question in terms of authority, rather than neutrality. Certain individuals can claim authority for their decision-making because they have developed a reputation for learning and fair-mindedness. It is unlikely that enough of such individuals, who were known to all the parties, could be found to staff an electoral structure that reaches down to commune level.

An alternative approach advocated the selection of electoral committee members from particular social groups whose political allegiances might be expected to be weak. Monks, students and teachers were suggested by NGO interviewees as suitable for this task. This approach was also perceived as having an added advantage—NUF party members and some NGO observers expressed concern that the electoral committees were intimidating to the voter, and the appointment of individuals from different sectors of society entirely would also solve this problem. The COMFREL, COFFEL and NICFEC recommendations include the stipulation that “a new proposal prohibits all public servants from serving on provincial election commissions.” The authors commented, “During the previous election period, where there were public servants on the provincial commissions, problems were caused due to the conflict of interest between the two roles.”

Similarly, an NUF party National Assembly member suggested:

“Don’t use the commune chief, use teachers instead, and retired people. This is a guarantee for a free and secret ballot...”

Such solutions offer an opportunity to deal with issues of public confidence, which may be undermined by *prima facie* conflicts of interest, even where there is little evidence to back claims of foul play.

Other interviewees, however, pointed out that such solutions remain problematic in a highly politicised atmosphere. The lack of political community between the parties led to a high level of suspicion between them, and, frequently, to charges of bribery and corruption. In this atmosphere, and particularly in view of the close scrutiny of every aspect of election committee activities, it was difficult for election committee members to maintain reputations for neutrality.

One NGO interviewee commented on perceptions of the NEC:

“Everyone trusted the NEC except the politicians. They shouted that the NEC was not neutral, that they used to be in the CPP. But where can you get them from—bring them all from America? From where? The CPP have 80 percent of the administrative positions in the countryside, but did they win 80 percent of the vote? No. The CECs were fair. Kassie Neou, when he went to join the NEC they accused him of being CPP. Cheng Phon left the CPP before the Paris [Peace] Agreements, but when he came back to join the NEC, they said, ‘oh, CPP.’ It’s difficult—you could put anyone in there and there would be a conflict. Even if you put the King on the NEC, they would say he was CPP.”

A further argument was that, given the politicisation of the administration in previous years, and the mass membership of the CPP, finding sufficient numbers of people free from political allegiance is likely to be problematic. A member of the NEC made this point, in accepting criticism of the activities of the lowest level of electoral organisers, the CECs:

“There was some bias in the CEC—that is a [wider] problem of society, and we take responsibility for that.”

Another NEC member commented:

“We tried to do our best [to] control our staff, but [were] not [able to do] enough. We agree that our staff for the CECs were not good, not neutral, but we also changed some. If we have enough evidence that they are not neutral, we will change them.”

### 3.3. *Activity-Based Approach*

The latter comment suggests a third approach to neutrality—a juridical approach in which the focus is placed upon an individual’s activities rather than his personal beliefs or past political associations, and in which evidence of partiality is required to revoke a presumption of innocence. This approach was adopted by the NEC, in response to complaints made by NUF parties and NGO observer groups.

An interviewee from COMFREL described an exchange between the NGO and the NEC over this issue, describing a set of instances in which COMFREL regarded the relationship between PEC members and provincial authorities as problematic for the neutrality of the PECs:

“We lobbied to change the composition of the PEC. We sent a letter to the NEC to change six presidents of the PEC in six provinces because they still kept a rank such as chief of cabinet or a secretary to the governor. We didn’t ask the NEC to expel them, but to move them from being presidents of the PEC to being honorary members.”

This interviewee went on to describe the response received from the chairman of the NEC, in which he asserted a presumption of innocence, to the benefit of the individuals involved, instead of the NGOs’ presumption that the existence of close relations between the PEC and the provincial authorities was problematic:

“He said when he got our letter he went to check these six people, to see whether were they independent, and he asked them to swear to him.... He said according to the law, only the ranks of governor, deputy governor, judge, prosecutor, or military officer are incompatible with the post of president of the PEC, not other civil servants. He said we cannot move them.... If we receive a complaint from an NGO and move them, it is not fair for them. He told me, ‘If you can find proof or evidence that they committed a partial act, then complain to us, and we will take serious measures.’”

This kind of response became the standard NEC response to complaints of bias made by NGOs and NUF parties, according to the accounts of interviewees.

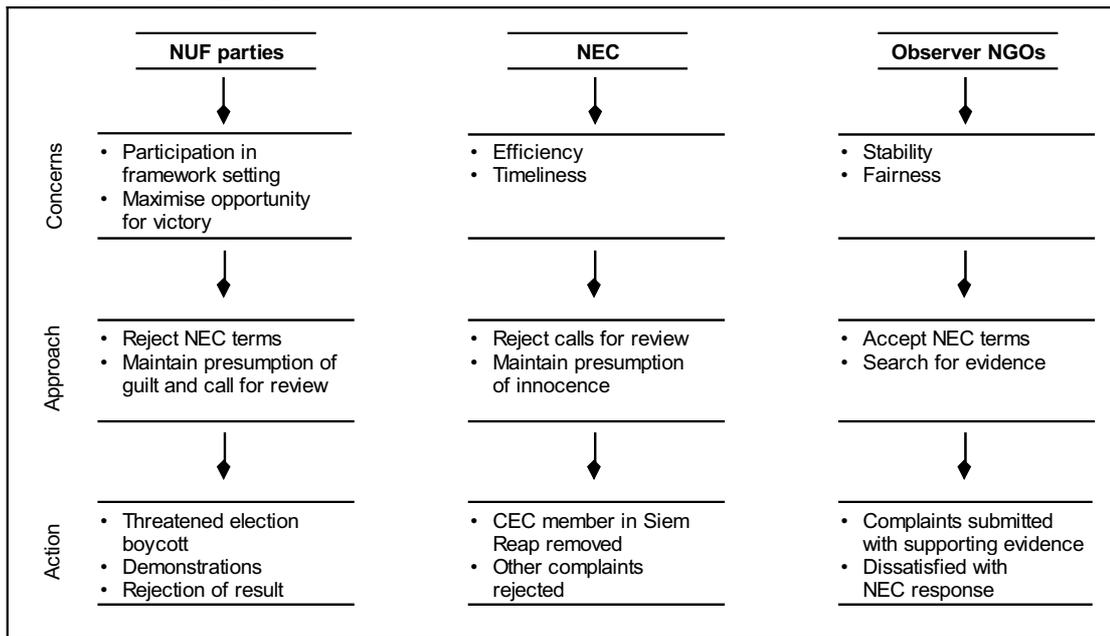
A potential weakness of this response is that it is inflexible, placing the interests of individuals above the interests of public confidence, rather than offering a compromise, such as the suspension of accused individuals pending investigation. In the tense political atmosphere before the elections, rumours and accusations were rife, particularly concerning “remote” areas, such as Preah Vihear, and the rubber plantations of Kompong Cham.

The passive stance of the NEC in the face of NUF criticisms failed to address the issue of NUF confidence. The NEC failed to challenge the criticisms of the NUF and other organisations convincingly, and thus permitted the growth of a perception among NUF supporters that the NEC had lost control in the countryside. One NEC member suggested that the NEC’s passivity in this context was due to its institutional weakness, compared to the power of the political parties:

“We should punish offenders, but [the parties] didn’t give much consideration to the NEC, so there was no way we could achieve this. The political parties were more powerful than the state—this caused limitations between the principle and application of the rule of law.”

### 3.4. *Conflicting Approaches and Conflicting Interests*

These three inter-related ideas about the nature of neutrality, and the appropriate means of ensuring it, coexisted during the electoral process, and underpinned the contrasting stances of the different actors. As indicated, each approach entailed disadvantages and advantages. There is a strong correlation between the approach adopted by each group and their wider interests, as illustrated in Figure 4.2.

**Figure 4.2. Differing Approaches to Conflict**

For the NUF parties, a major concern was to exert influence over the electoral framework, which had been established in their absence, and to insert their sympathisers into positions where they could scrutinise the workings of election procedures. Consequently the most useful approach to the question of neutrality, from their perspective, was to demand a delay in the election and a re-working of the NEC, PEC and CEC memberships to permit a greater role for their own members. A delay in the elections was also useful to the NUF from the perspective of consolidating their party networks and delivering their policy messages. An approach to neutrality which emphasised the means by which individuals were appointed served these wider interests.

NGO observer groups initially adopted the view that close relations between local authorities and electoral committees were likely to promote distrust. In line with their concern for stability and their own reputation for neutrality, however, the NGOs altered their approach and complied with NEC requests for evidence of partisanship, once this became the official approach to the question. This imposed a burden on NGOs, and in interviews some NGO representatives complained that they had insufficient time and resources for such work. Yet the NGO observer networks, developed as a means of passing information from the periphery to the centre, and their contacts with agencies such as the UNCOHCHR, which had strong capacities for investigation, permitted them to engage in the process of seeking evidence for allegations made.

However, NGO interviewees also complained that the procedures by which the evidence they presented was assessed by the NEC were not public and not clearly explained. A senior COMFREL member commented that a complaint regarding alleged abuses by provincial governors in Preah Vihear and Stung Treng was not treated seriously by the NEC:

“When we complained, nobody cared. The NEC sent [investigators] to Preah Vihear to investigate, but nothing happened.”

The dissatisfaction of NGO members, despite their willingness to engage the NEC’s approach to resolving these conflicts, suggests that a strengthening of this approach is necessary to render it authoritative in defining neutral and partial behaviour on the part of election committees.

The origins of the NEC’s evidence-based approach may be found in its central concerns: to comply with the demands of the law and international donors in delivering the elections on time. In grappling with this complex task, the NEC adopted a pragmatic approach to the question of

neutrality of lower-level committees that placed the onus for gathering evidence on those who made complaints. This represents a sensible approach to a problem that promised to consume large amounts of time and resources.

With hindsight, however, this approach was not particularly effective in dispelling the concerns of other groups regarding the issue of neutrality, for two main reasons. First, even those who engaged with this approach to conflict resolution, such as COMFREL, perceived the NEC's response to their complaints as being inadequate to restore confidence. Second, an attempt by the NEC to bolster its own reputation amongst dissatisfied groups, by taking a proactive stance towards rooting partisanship out of the election committee structure, might have awarded the NEC greater authority in the crucial post-election phase.

Although the activity-based approach was appropriate in view of the technical demands made on the NEC, it was inadequate to address the political demands—the demand that the NEC demonstrate its neutrality in order to be awarded authority by other electoral participants.

A trade-off between technical and political questions was required. This is a question likely to re-emerge during the next election, as the political advantage of altering the committee membership is weighed against the technical advantage of keeping experienced individuals in place. In weighing the alternatives, the need to build political capital, to support authority and promote allegiance, must be weighed along with the need to foster technical expertise. This is particularly so in an environment characterised by weak political institutions.

In a highly politicised environment, technical decisions are likely to be affected by the politicisation of the decision-makers, and are likely to be interpreted as political by those who are affected by them. The focus of the NEC on technical and legal questions, and its insistence that political questions were for the political parties and the National Assembly to resolve, reflected the central problem of separating technical and political questions in the Cambodian environment. For example, one NEC member commented:

“It was a political problem—the opposition contested that the NEC should delay [the election]. The government said it should have the election at any cost. It pulled the NEC apart. The NEC had to go one way, with the law. It is very important to have compromise from the political parties. We are not biased. We are neutral, we act according to the law. But there must be compromise, consensus between the parties. Conflict resolution requires the input of all parties.”

The background of distrust and tension, however, meant that those sections of the community who appeared to have been excluded from participation in the electoral committees, viewed them as politicised. The emphasis on technical questions was problematic in two ways. First, the NUF and some NGO leaders viewed emphasis on technical questions as itself a political decision, or, worse, as a ploy used to preserve an unequal status quo. Second, it limited the ability of the NEC to invest in its political reputation by acting on political questions, such as *prima facie* conflicts of interest facing CEC members. The failure of the NEC to deal adequately with complaints offered by cooperative NGOs working to the NEC's own approach, compounded the problem and entrenched hostilities.

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#### **4. Problems of Institutional Weakness and Political Community**

At all stages of this conflict, the effects of wider problems of institutional weakness and political community are apparent. Emphasis by members of election committees and the Constitutional Council on the legal restrictions and technical constraints which limited their options suggests that politicisation was already built into the electoral environment of laws and technical provisions.

For example, disruption to the legislative branch of government, the National Assembly, in mid-1997, severely affected the NUF perspective on the electoral laws and the procedures for

appointments to the NEC and its subordinate committees. NUF perceptions, repeatedly expressed, that the electoral committees represented part of a biased political framework that had been set up in their absence, hindered the ability of the NEC to build its authority among NUF members and supporters in the months leading up to the election.

To a great extent, also, the conflict reflected the near-monopoly of administrative experience of the CPP after its 20 years in government. Given tight time schedules and complex problems, former or seconded local authority members were the obvious choice to fill the electoral committees from a technical point of view. The politicisation of technical and administrative expertise in rural Cambodia underlay disputes as to whether technical or political motives were uppermost during appointment procedures.

A further problem, which encouraged escalation of conflicts over electoral organisations and processes, was the importance of the views taken by foreign governments and observers. As the funders of the election, foreign governments were in a strong position to have a final word over the form of the election process. This removed the responsibility for achieving an authoritative and mutually binding *modus vivendi* from the parties.

It discouraged negotiation and bargaining between Cambodia's political parties to achieve a compromise position among themselves. Rather, it encouraged inflexibility, and even the exaggeration of the perceived political problems in the existing frameworks and the alleged technical difficulties of altering them. Foreign observers were not united in their view of the election procedures, with favourable and critical reports emerging from different organisations, encouraging vigorous pursuit of international support for each side of the question. The parties of the post-1997 government saw no incentive to alter provisions while they retained international funding, while the NUF parties, encouraged by critical analyses of the process released by a variety of international organisations, maintained their militant rejection of the arrangements. Although international influence was significant enough to encourage these kinds of responses, it was not sufficiently authoritative to impose a binding solution. The international acceptance of the electoral arrangements was finally rejected by the NUF parties.

Similarly, the historical and present weakness of institutions of state in Cambodia, in comparison to the strength of the political parties, means that the idea of a "neutral" state agency is relatively new in Cambodian political experience. In this context, widely differing approaches to the meaning of "neutrality," and different recommendations as to how neutrality should be achieved, are unsurprising.

The problems faced by the NEC in this regard are parallel to problems facing observer NGOs. A senior COMFREL representative commented that COMFREL's intervention, intended to ensure an equal opportunity for the NUF parties to campaign, led to perceptions among CPP members that the organisation was biased. He said:

"We can help a lot to improve the election and protect opposition activists. We are accused that we are not impartial, but what can we do? During political conflicts the victims are the activists of the opposition party. If we keep quiet, we lose our *raison d'être*."

Both situations suggest that the inability of the parties to agree on the parameters of a "neutral" sphere for action represents a significant problem for non-party organisations, which are attempting to build forms of political authority that do not rest on party allegiance. Polarisation of the parties prompts the view, according to the COMFREL member, that "if you are not my friend, you are my enemy. If you are not my enemy, then you are my friend."

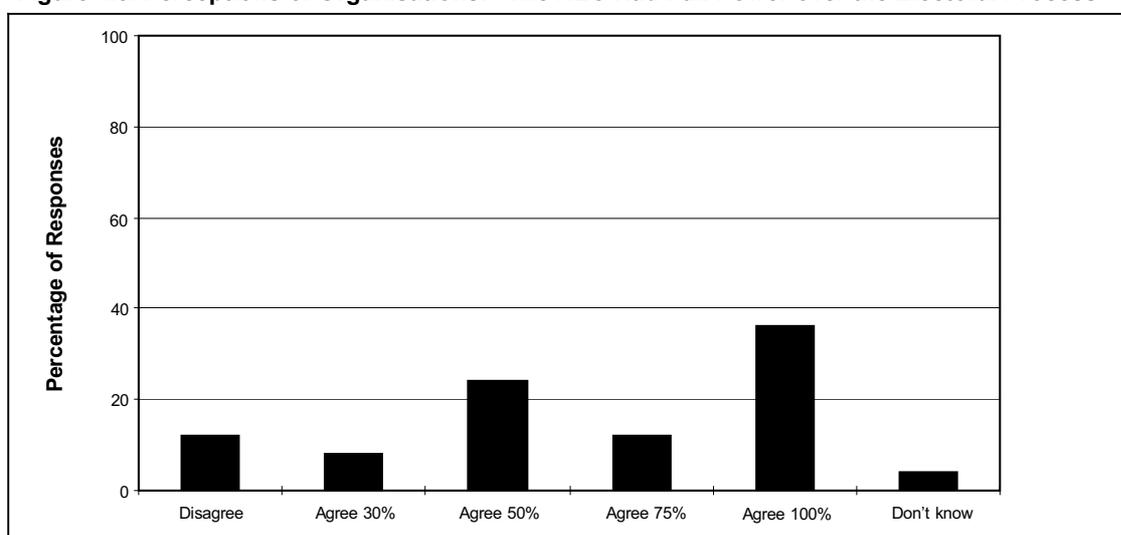
The perpetuation of this relationship between the parties in itself prevents the development of any "neutral" agencies which can act as mediators in situations of conflict.

## 5. The Conflict over Electoral Committee-Executive Relations: Autonomy

During an interview for this study, a senior official at the Ministry of the Interior defended the independence of the NEC from the Ministry in the strongest terms:

“This was the first election organised by Cambodians and we wanted to see that the NEC is independent and neutral. And so we had an independent body, independent from government and from the state institutions.... The NEC is the child of the Ministry of Interior, the Ministry gave birth to the NEC. But after the NEC was born, the relationship was one-way. We had connections, and we gave it a place inside the Ministry, so they said the NEC was part of the Ministry because of its location and background, but in fact after the NEC arose we didn’t put any pressure on the NEC. This is the truth. When the electoral process began, the Ministry of Interior had duties of its own. But it was not involved directly with the process.”

**Figure 4.3. Perceptions of Organisations: “The NEC Had Full Power over the Electoral Process”**



By contrast, another senior Ministry of Interior official, this time associated with the NUF parties, complained about the lack of independence:

“To find an independent [NEC] president, we don’t need to seek advice from other people, from the Prime Minister or other political party presidents. If you have your own staff, you should work with your own staff. If you need advice, hire an adviser. Ask Cheng Phon how many times he asked advice from the prime ministers.”

Such polarised opinions of the independence of the NEC were noted throughout the election process, and extended beyond political society, affecting the responses of NGO observers interviewed for this study. NGO interviewees were asked to comment on the *de facto* validity of the statement, “the NEC had full power over the electoral process.” The extent to which interviewees agreed with the statement is shown in Figure 4.3. More than one-third of interviewees agreed fully with the statement, while approximately one-quarter agreed only 50 percent.

Most NGO interviewees qualified their assessment with the belief that the NEC took orders from others. For example:

“The NEC had full authority, but there were people above it.”

“The NEC took orders from the political parties.”

“The NEC had the full right to implement its authority over the elections, but in effect, it exercised only 40 percent. It was able to decide by itself only 40 percent [of the time].”

“The NEC had power, but was subject to orders from others, orders which come from the high levels, the party leaders.”

Relationships between the NEC and the political parties were problematic for the reasons discussed above. One member of the NEC, interviewed for this study, commented:

“In the final conclusion there were limitations partly because the political spectrum is so strong, and the NEC sometimes was not able to work so freely as we would like. The predominant political party put its full support behind the NEC—this was a good sign, but it also meant that the other political parties had no input.”

For the NEC, the weakness of the state apparatus, and the dominance of the political parties over it, entailed that election committees faced the choice of either attempting to work alone or accepting “support” from central and local authorities. One secretary of state at the Ministry of Interior referred to this relationship in the following terms:

“We were able to have the cooperation of local authorities and NGOs to help and assist the NEC, PEC... and CEC perform their functions. After the formation of the CECs, we were worried about finding a location for them to work in. There were no places for the offices of the CECs. The assistance of the local authorities was very important, even though there was criticism that they were biased.”<sup>11</sup>

This situation represented a real dilemma, pitting technical objectives against political ones. Since 1996, leaders of FUNCINPEC and the SRP had complained strongly about a perceived politicisation and partisanship among the local authorities, which they believed operated to exclude NUF supporters from political activity at local level. These complaints were at the centre of the deterioration in relations between the NUF parties and the CPP prior to July 1997. Accepting local authority assistance in meeting technical requirements meant that some of the NUF distrust of the local authorities transferred itself to the election committees. The electoral administrators decided that, despite the effect on the NEC’s political authority, the technical requirements of the election dictated this course of action.

This problem had repercussions extending beyond the inter-party relationship. Among the NGO observer groups participating in this study, there was a strong perception of politicisation among local authorities. NGO observers were asked to comment on the statement, “the local authorities took a sufficiently neutral stance” during the 1998 election. No NGO respondent indicated 100 percent agreement. Sixty percent of interviewees agreed only 0–30 percent with this statement (Figure 4.4). Only one interviewee commented positively on the role played by the local authorities:

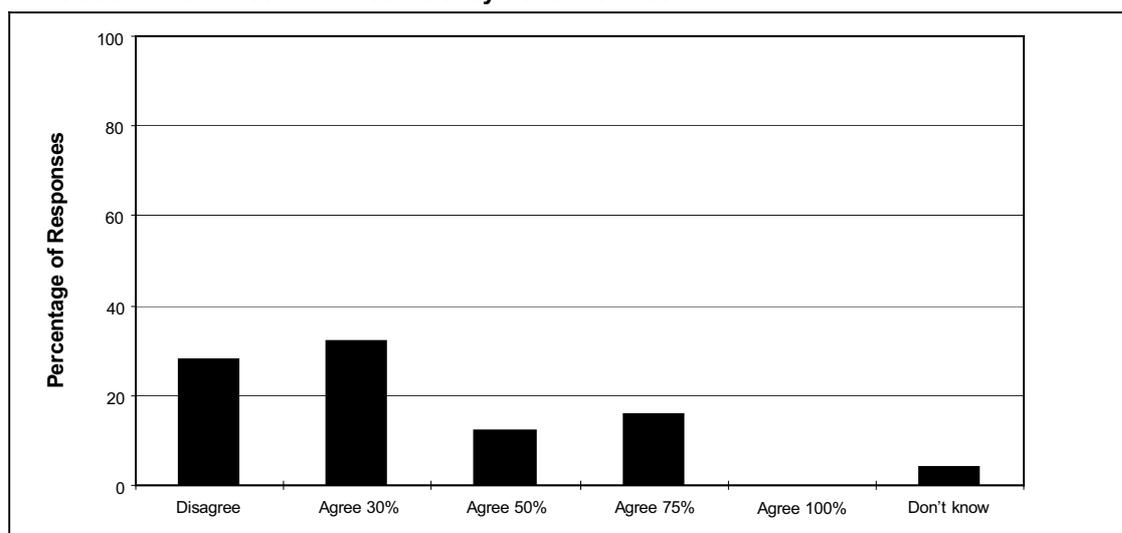
“The local authorities had sufficient neutrality. I met members of the local authorities, whom people said were in this or that party, but I saw them in their work.... Even though, in society there are members of the local authorities who support different parties, in their election work they fulfilled their duties well.”

One other NGO respondent commented:

“The local authorities were not 100 percent perfect, but we are not living in the sky. We cannot take the CPP network outside Cambodia for the period of the election.”

<sup>11</sup> Prum Sokha, presentation at the *Conference on the Prevention of Conflict in the Commune Election*, Phnom Penh, 16 June 1999.

**Figure 4.4. Perceptions of Organisations:  
“The Local Authorities Took a Sufficiently Neutral Stance”**



The views of these two interviewees reflect an appreciation of the technical demands which dictated cooperation with local authorities. Other interviewees were more critical of the relationship between the electoral committees and the local authorities, regarding local authority “support” as politically problematic:

“The problem was the local authorities, the military, the police. This used to be a communist country, the people have lived more than 20 years with them. You can see it on their faces. You have to build confidence among the people, have to improve their knowledge and their mental state.”

“There was not much local authority interference in Phnom Penh, but in the provinces there was.”

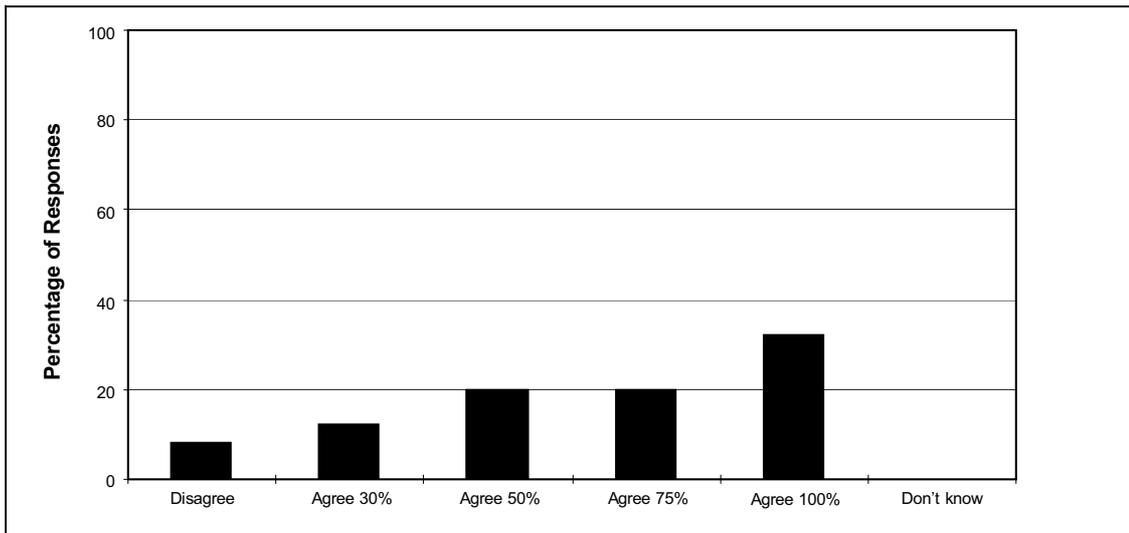
“The local authorities were the most threatening—the commune and village authorities. The observers saw this. They didn’t recognise members of their own village who were in the opposition. For example, they wouldn’t accept Ung Huot, never mind FUNCINPEC and Sam Rainsy. The high-level people know about democracy, but the low-level people don’t know.”

Asked whether “the activities of local authorities had a serious effect on the election results,” there was less agreement. The answers given are shown in Figure 4.5. Almost one-third agreed fully with this statement. The interviewee who commented positively on the role played by local authorities above was also the only interviewee to consider that local authorities had had a positive effect on the elections:

“On election day, sometimes voters went together [to the polls], but when they entered the polling station they entered as individuals. The electoral authorities requested some help from the local authorities, so that local authority help came from the NEC’s request. So there were activities that affected the election, but if you are asking if the local authorities did bad things to affect the result, I don’t agree.”

Again, this interviewee focuses on the technical questions of the electoral committee-local authority relationship, while other interviewees considered the question from a political point of view. One interviewee believed that, though the local authorities conducted various activities in an attempt to affect the election result, these had been unsuccessful and “the popularity of the parties

**Figure 4.5. Perceptions of Organisations:  
“The Activities of Local Authorities Had a Serious Effect on the Election Results”**



was more important.” One comment was made indicating means by which the local authorities might indeed have affected the election result:

“Sometimes the commune chief stood in front of the polling station, and people were afraid. They didn’t dare to do anything.”

Furthermore, asked whether any of a list of participating electoral agencies had exceeded their authority during the election period, most interviewees selected the local authorities, as indicated in Figure 4.6. Comments included the following:

“First the commune and village authorities, and second the police. They are like the left hand and the right hand.”

“All [local authorities] went beyond the law. All went too far. Sometimes when people went to vote, they sent their own group in first, and everyone else had to wait.”

Political parties were also criticised on this question:

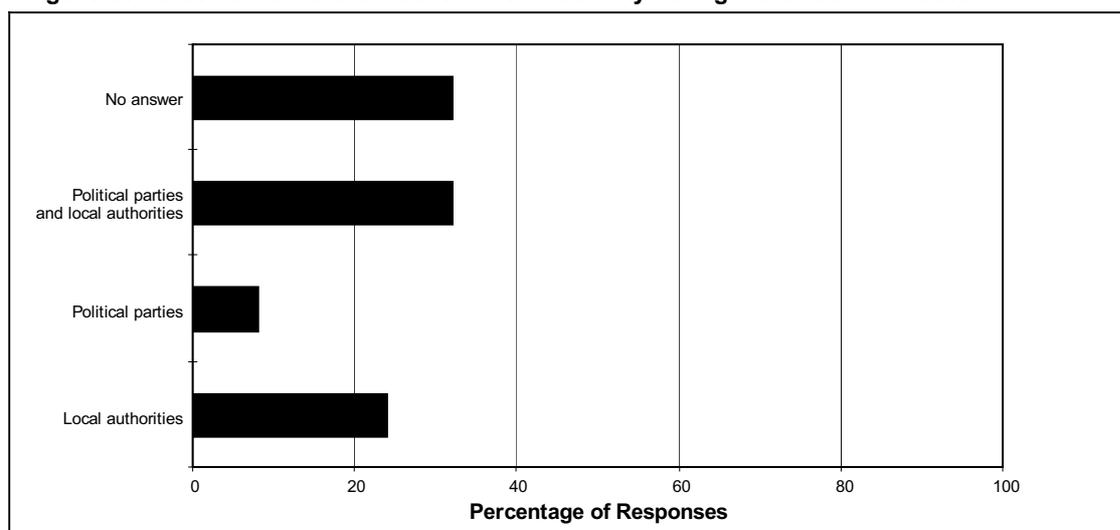
“The political parties exceeded their role. For example, in Kompong Chhnang, the political parties did not always respect the law. I choose only the political parties in this question, because the police and military are under [the control of] the political parties.”

“The political parties and the village militias. They are too strong, and they don’t know about democracy. The local authorities less so. There is a law on political parties, and they went past the law.”

The perceived dominance of political parties and local administrative authorities, which were viewed by these interviewees as highly politicised and abusive, was problematic for the CECs in seeking to implement the election effectively, while promoting their own authority, and maintaining autonomy. Although NUF parties alleged that the CECs and local authorities shared the same political objectives, a senior COMFREL official argued that the relationship was an uneven one, in which well-established local authorities dominated CEC members who were long accustomed to bowing before the power of the authorities. He commented:

“Sometimes [the CECs] don’t work. They fear the governor or the chief of police, they know them from a long time ago, and they don’t like to confront them.”

**Figure 4.6. Perceptions of Organisations:  
“Agencies Perceived to Have Exceeded Their Authority during the Election Process”**



The perception that the “support” offered by local authorities had turned into “orders” affected the CECs’ ability to establish authority over their jurisdiction. Another COMFREL member suggested that the failure of the NEC to punish offenders had contributed to this problem. By using strategies of mediation and negotiation, rather than by exerting its legal and moral authority, the NEC did not exhibit determination to defend the integrity of the electoral process and did not constitute itself as a significant power:

“The NEC sent people to investigate—they investigated and found nothing. No witnesses, no evidence, so [they said there was] no case. No case and compromise, talk, reconciliation. But criminal law says crimes cannot be reconciled. They still think of it as a problem between individuals, so if there is talking, compromise, reconciliation, then the case is finished. Especially with election disputes, there is no definition to say clearly that they are a public offence.”

These perceptions of weakness on the part of the lower-level electoral committees in part reflect physical realities of Cambodian infrastructure. As noted earlier, the NEC lacked the means of contacting local electoral committees by telephone for much of the period leading up to polling day. In the absence of backing from the centre, the local authorities were an obvious source of support for local electoral committees, especially as many committee members had previously worked in the local authority structure. Within the communes, few if any alternative sources of practical knowledge, equipment and experience existed. Accustomed to controlling events in their domain, the local authorities were perceived to be controlling the activities of the local electoral committees as well.

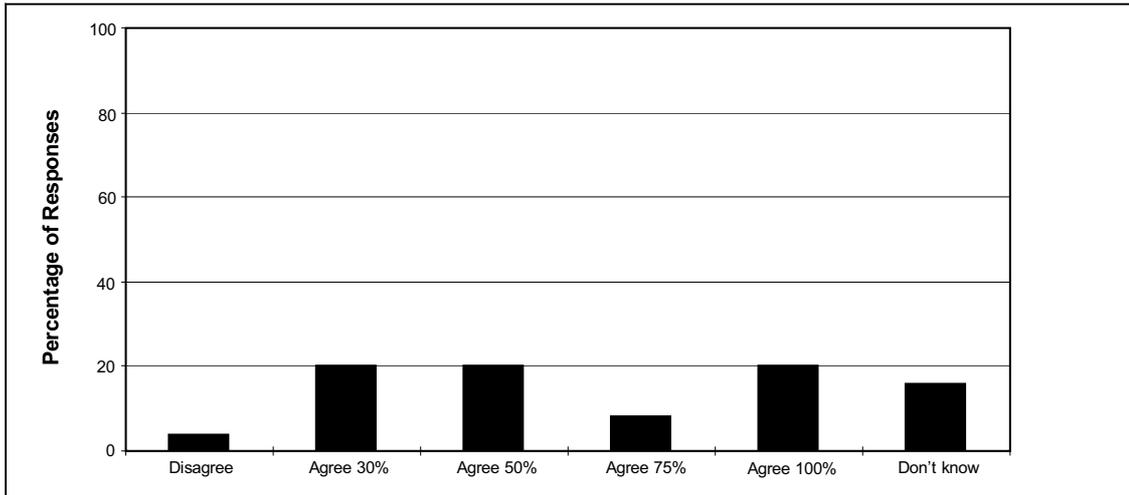
The status of the local authorities has long been problematic in Cambodian politics. In 1993, UN electoral organisers made strenuous attempts to control local power, particularly with reference to cases of alleged abuse of either human rights or election regulations. They were uniformly unsuccessful in this. Disputes over local power also marked the beginning of an accumulation of tension between the NUF parties and the CPP from 1996, which culminated in the military confrontation of July 1997.

The decentralisation of power in Cambodia is such that local officials hold very strong positions. Adopting the technocratic perspective, and accepting the assistance of such officials, even at the expense of perceptions of loss of autonomy, represented a strategy of pragmatic realism for the electoral committees. The implications of weakness of CECs *vis-à-vis* commune officials for the holding of the commune election are profound.

## 6. Outcomes of Political Problems: The NEC after the Election

Despite these problems, interviewees generally believed that voters had a reasonably high level of trust in the NEC until after the release of results. Asked whether voters had trust in the electoral authorities—the NEC, PECs and CECs—NGO respondents gave a mixed set of responses, as shown in Figure 4.7, but few interviewees disagreed totally with the statement, and more than a quarter agreed 100 percent. There were, however, a significant number of non-responses to this question. Many respondents commented that perceptions of the election authorities changed over time, with the breakdown in trust coming after the election result was announced.

**Figure 4.7. Perceptions of Voter Understanding: “Voters Trusted the Election Authorities”**



Respondents who believed voters had little trust in the NEC indicated that, after the results were announced, voters refused to believe a decision which did not generally reflect their own preferences and perceptions. This, also, suggests the fragility of the authority which the NEC had managed to garner in the pre-election period. For example:

“People said that they believed in the NEC before the election, but after the results came out, they didn’t agree any more, because the results did not follow their hearts.”

“Before the election there was no problem, but [voters] wonder about the time when the NEC announced the results. It took more than one week. That made people lose trust in the NEC. They wondered why it took so much time. The NEC should have informed the public about the problems. The NEC wasn’t good after the elections. It made the people worried.”

After the election, the criticisms of the parties in the NUF and NGO observers, and disappointment at an election result which did not favour the NUF, combined to cause the alienation of NUF supporters from the election process, and the withdrawal of their recognition of NEC authority.

One NGO respondent believed that problems of distrust were caused by the political parties. This respondent had been a member of a PEC, and commented:

“Voters’ trust in the NEC? Generally, yes, but there were some problems. I met some people who didn’t trust the NEC, but this was because of twisting of facts from political parties when speaking to their supporters.... Problems that arose were from supporters trying to defend their parties. Most of the conflicts were between political party and political party.”

A number of interviewees commented that rejection of the results and of the fairness of the election by the loser was to be expected, and should not be viewed as a problem of the electoral committees. One interviewee commented, “The CPP would have done the same.”

This raises an important question of approach to electoral conflicts, which underlies many of the perceptions of electoral committee performance outlined here. For some interviewees, the electoral committees were victims of wider problems in society. For others, they were seen as a mechanism designed to overcome these problems.

Again, this difference of opinion reflects the duality of the electoral committees’ tasks. Emphasis on the electoral committee as fulfilling a technical and administrative role places the burden of responsibility for problems of politicisation on the very political parties, weak institutions and politicised authorities, which made this technical and administrative role difficult. Emphasis on the political role of electoral committees, as committees designed to ameliorate the politicisation of the environment and to promote elections as a means of resolving Cambodian political conflicts, places responsibility for problems at the door of the committees themselves.

NEC members interviewed were reluctant to claim a political role for themselves. This reluctance, and the failure of the political parties to resolve political problems between themselves, meant that political questions of autonomy, authority and allegiance went unaddressed. The objective of these tasks was to gain the ability to exert control over disappointed political leaders after results were announced. It was at this point in 1998 that the electoral committees proved to have limited power, despite their creditable performance in fulfilling their technical tasks.

After the election, also, new technical problems became apparent which meant that the NEC could not reclaim control of the deteriorating political situation. In particular, insufficient planning, human resources and time had been allowed for a post-election complaints procedure.

This is reflected in responses given by NGO interviewees to the statement, “all complaints related to the elections were addressed properly by the NEC and the Constitutional Council,” shown in Figure 4.8. Almost two-thirds of respondents indicated 30-percent or less agreement with this statement. One interviewee agreed with the statement, again emphasising technical questions and placing political responsibilities at the door of the political parties, commenting:

“NEC and Constitutional Council handling of complaints was correct. [The parties] still didn’t agree, but this was a political problem, to reject the electoral results.”

Other comments included the following:

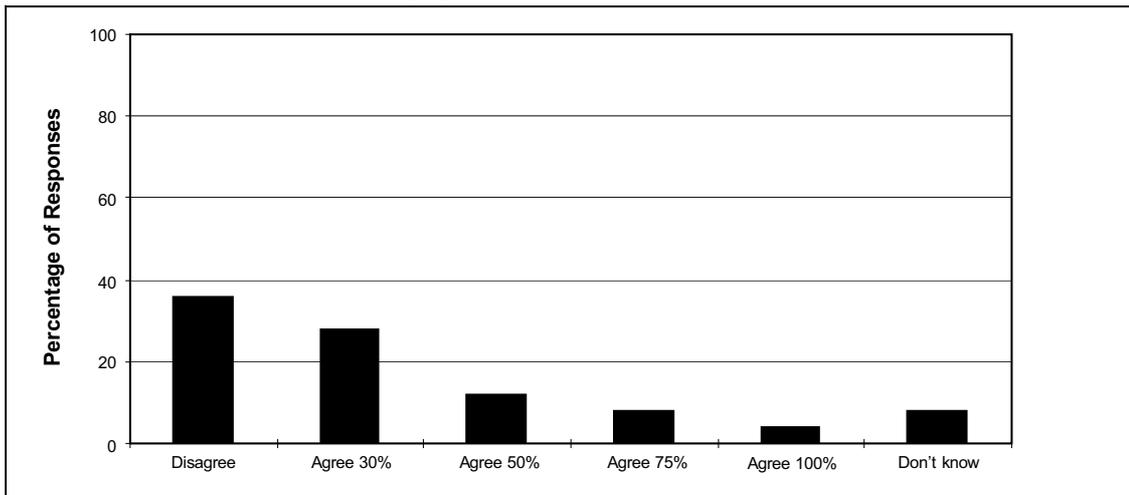
“The NEC had limited power and the Constitutional Council was not neutral. For the recounts they had no people and no money.”

“On the day they opened the National Assembly, Sam Rainsy said that they sent 800 cases of complaint to the NEC. But the NEC said there were only 12. The NEC and Constitutional Council didn’t solve anything.”

Several problems combined to undermine the complaints procedure. First, the earlier controversy surrounding both the NEC and the Constitutional Council, which had continued since the formation of these institutions earlier in the year, undermined their authority both in relation to the implementation of the processes, and the implementation of the complaints procedure. This controversy deepened during the first week after the election, when the NEC appeared to be concealing news about the election results from the public.

On the morning after the first day of counting, pro-CPP newspapers claimed 67 seats for the CPP. Hun Sen left for Siem Reap to ask the King to recognise his party’s victory long before the NEC had released a complete set of results. This contributed to a perception that the CPP was in control of the process, and the NEC was, at best, incompetent. One NGO interviewee referred to this issue as one which had raised suspicions in his mind as to the integrity of the election:

**Figure 4.8. Perceptions of Organisations: “All Complaints Related to the Elections Were Addressed Properly by the NEC and the Constitutional Council”**



“I can’t say if they organised the election properly, I only looked in 12 places, so I can’t tell. But after the election, Hun Sen knew already how many seats he had in the National Assembly, before they finished counting.”

At NEC media briefings, results dribbled out, two or three communes at a time, to the frustration of journalists. When Sam Rainsy attended a briefing in order to address members of the NEC, the briefings were suspended altogether. In the face of apparent reluctance on the part of the NEC to release the results, rumours began to emerge of arguments within the NEC itself, allegedly over cheating during vote counting. NEC members denied this, asserting that the delay was simply caused by a concern on the part of the NEC that the results released should be accurate. One NEC member acknowledged the criticism:

“There was no mechanism to show that the release of results was being handled appropriately, so the political parties couldn’t accept it. There were leaflets going around, people in the market were taking bets on the results. That has to be controlled. There must be a mandate and regulation to punish those who release unofficial results. Psychologically it was very problematic for the NEC. The NEC took one month [to reach a final count], but the parties took one day. The issue should be resolved.”

Second, insufficient planning of the complaints procedure meant that NEC and Constitutional Council officials were unprepared, particularly given the avalanche of complaints that arose. At the commune level, CEC officials were reported as having no understanding of how to deal with complaints. An NEC member said:

“It is important that we train them to know about the procedures of elections because misunderstandings about the process cause conflict. For example, the polling station committee—some of them didn’t know well about procedures for complaints. And political agents didn’t understand also. That caused problems.”

For the NEC also, there was a lack of capacity for handling the influx of complaints from all over the country. A number of these complaints were not direct allegations of cheating, but rather concerned violations of the NEC regulations: for example, complaints were made about the wearing of party t-shirts inside polling stations. The significance of such incidents was hotly contested, with some observers claiming that these were only minor or “trivial” infractions of the rules. The distrust between the political parties led to strenuous NUF objections to any complaints being dismissed as insignificant, and demands that each be investigated separately, and counter-objections that such demands were cynical attempts to derail the process by flooding the com-

plaints procedure. This situation had been predicted by then-Minister of Justice the late Chem Snguon well before the election, but his warning was apparently not heeded.<sup>12</sup>

One member of the NEC acknowledged the problem, but defended the NEC's efforts:

“There was lack of attention to support the legal and complaints process. Next time the complaints process must be fully strengthened and operated.... We had only 36 hours to handle 800 complaints. We cannot go to the remote areas to investigate. They must give us enough time and resources. This needs an amendment of the Election Law to increase the time frame. The NEC did a marvellous job with complaints, we only had 20 investigators. Because of our limited resources, we were overwhelmed with complaints.”

Amendments to the Election Law to facilitate the holding of elections before the constitutional deadline of 24 September for the swearing in of the new National Assembly, caused the amount of time for complaints to be cut down to a minimum.

Further problems raised by NEC members were the problems of centralisation that occurred in the handling of complaints. Because of incompetence or insecurity in the many polling and counting stations around the country, few complaints were raised and resolved at local level. Rather, political party agents sent information back to party headquarters, and party headquarters forwarded the complaints to the NEC. This placed a great burden on the capacity of the NEC to act, particularly once the election was over. This point was raised by an NGO interviewee, as well as by an NEC member:

“In the communes, they must speak up. If the observers say there is a problem, then they can solve it right there. In the communes, they didn't solve the problems properly because they did not understand the electoral process, the procedures for complaints. But then the NEC couldn't solve it. The NEC didn't participate directly, so it's difficult. They raised many complaints. How can they weigh all these complaints afterwards?”

“When they go to watch, they must know what is good and what is right. And then the politicians began to exploit this problem. Their agents signed the statements in the polling and counting stations, but the parties still complained. Some parties, two days after the election or after the counting, began to complain. We don't know how to solve this problem, because the parties didn't understand their duties. For example, if they knew there were members of the local authorities there in the voting station, don't wait until several days afterwards to complain.”

Two NEC members reported that at this stage of the process, the politicised atmosphere affected the NEC itself. One member interviewed for the present study suggested that decision-making procedures within the NEC at this point became politicised, preventing the NEC from developing an adequate response to the problems:

“The NEC uses majority rule—any major decision, including a tribunal—we have to consult with the NEC committee as a whole, so we are limited in having full independence. At present, for us to do something individually is difficult. We need a consensus or a majority, and that means the governing party will have full influence over the process.”

Opposition demands for recounting appear to have thrown the NEC into disarray. Explanations for the refusal of the NEC to continue recounting votes, after a nominal attempt towards this, or publicly to reconcile the figures regarding used, unused and lost ballot papers, are varied. NEC members point to technical reasons, particularly lack of time, money and resources for recounting:

“Even though they saw that we recounted for eight communes and the result was no different, they wanted more, but we didn't have the time or the resources to count again.”

<sup>12</sup> Eric Pape, “Council ‘Too Busy’ for Details,” *Phnom Penh Post*, 16–29 Jan 1998, p. 5.

A senior COMFREL member agreed: “for the recounts, they had no people and no money.” Another COMFREL member, who was closely involved with the parallel counting initiative, and was familiar with NEC figures, commented that NEC reluctance to recount and reconcile their figures was connected with organisational hubris, and designed to conceal a large number of mistakes in NEC calculations. Yet neither of these leading COMFREL members believed that the discrepancies which the NEC wished to conceal were either symptoms of massive electoral fraud, or significant in their impact on the result.

A FUNCINPEC politician reported that recounting was difficult because at the level of the PEC, ballots from different communes had been mixed together. He said:

“When the commune office sent the bag to the province, the province checked it and then mixed the commune bags together. So we couldn’t investigate properly. At the provincial level they mixed all the communes together. We had to open 106 bags before we found the ballots for one commune. That delayed recounting.”

Significantly, this politician suggested that the mixing had been done deliberately to conceal electoral fraud at the level of the PEC office.

In such cases, a lack of technical preparation combined with a sudden deterioration in political relations. As soon as the results began to emerge, two days after the election, FUNCINPEC and the SRP released statements rejecting the election procedure. The one link that had connected the NUF parties and the CPP alliance—desire to compete in and win the elections—had broken. From this point on there were no common interests to maintain relations between the parties.

Consequently, and in view of the problems which had arisen earlier in the relationship between the NEC and the NUF, the NUF interpreted technical problems within the NEC as deliberate, politically-motivated evasions. Attribution of political motivations underlying claims of technical impossibility were made at this time. This was a common explanation offered by the opposition for all kinds of technical problems which dogged vote counting, the release of results, allocation of seats, and recounting in August 1998.

The NUF viewed the abrupt suspension of recounting by the NEC as particularly suspicious. Counting and recounting procedures were designed to ensure transparency. In their absence, it was difficult to verify the results in the face of objections and anecdotal complaints. The lack of ability to recheck results raised greater suspicions than the rather anecdotal “evidence” of fraud coming in from counting stations around the country. Charges made by opposition leaders frequently recounted instances of officials seen behaving suspiciously, or of boxes not being properly sealed, rather than constituting positive evidence that fraud had actually taken place. The failure of the NEC to pay more attention to building up its political capital with the NUF parties, by responding more actively to earlier complaints, now rebounded upon the agency, as its pronouncements were viewed by the NUF leaders as disingenuous.

At the point when results are released, the authority of the electoral administrators is paramount, not only to convince discontented losers to accept the result, but to pressure newly empowered victors into maintaining a commitment to the verification and legitimisation of the result. The particular problems of the post-election period emerged from the fact that the NEC appeared ill-prepared both in technical and political terms. In the sharply polarised atmosphere which followed the election, the NEC lost its ability to maintain the obedience of the political parties and the process began to break down.

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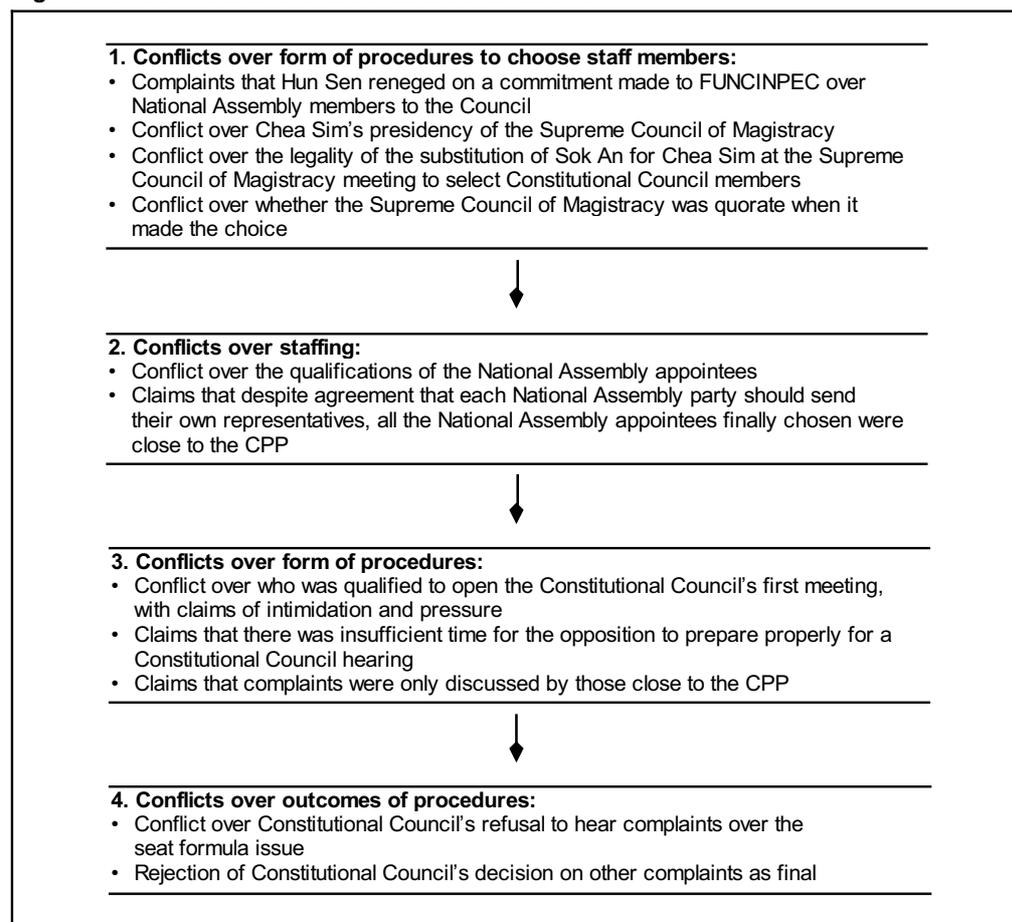
## **7. The Constitutional Council**

A further problem for the complaints procedures was the status and performance of the body designed to act as the final decision-maker on election complaints. By the time complaints were forwarded to the Constitutional Council, political tension was intense and demonstrations had

begun which attacked not only the electoral but the moral legitimacy of the CPP's prime ministerial candidate. This shift in the opposition's agenda was beginning to render electoral processes irrelevant to the question of government power.

Yet weaknesses in the Constitutional Council itself, as a political institution, contributed to its inability to contribute to a peaceful resolution of the political deadlock. As the Constitutional Council was envisaged as the agency of last resort for resolving political conflict, analysis of its flaws in 1998 are essential to a process of reform.

**Figure 4.9. Conflicts over the Constitutional Council**



The controversy which dogged the Constitutional Council resembles that which followed the NEC, dating back to well before it was first convened on 15 June, in an atmosphere of hostility which prompted the immediate resignation of its convenor. Opposition complaints about the conflicts which surrounded the establishment of the Constitutional Council were summarised in a series of statements released by the Sam Rainsy Party in May and June 1998.<sup>13</sup> Figure 4.9 shows schematically the way in which conflicts surrounding the Constitutional Council accumulated. In large part as a result of these political problems, the Council's final decision, on 1 September 1998, to reject the opposition complaints, was viewed by the NUF parties as possessing no authority. This occurred despite Article 117 of the Constitution, which states, "the Constitutional Coun-

<sup>13</sup> NUF, "Joint Statement on Elections Scheduled for July 26, 1998," Phnom Penh, 18 May 1998; SRP, "How Can the Constitutional Council Be Legally Formed at this Point?" Phnom Penh, 8 June 1998; SRP, "Cambodian Constitutional Council Meeting Still Illegal," Phnom Penh, 11 June 1998; SRP, "Unconstitutional Body Kills the Democratic Rule of Law," Phnom Penh, 16 June 1998; SRP, "Memorandum to the Friends of Cambodia, Summary of Problems with the Electoral Process," Phnom Penh, 19 June 1998.

cil shall have the right to examine and decide on contested cases involving the election of Assembly members.”<sup>14</sup>

In addition to these political problems, the Constitutional Council, like the NEC, suffered from legal constraints over its activities which severely limited its ability to take control of the deteriorating post-election situation. One Council member focused on these technical problems in a presentation reflecting on the Council’s performance, given in June 1999. He commented, “problem number one was timing”—specifically the limit of 60 days imposed by the 1993 Constitution, from polling day to the first meeting of the new National Assembly. Within this time period, he pointed out, vote-counting, the announcement of results, receipt of complaints, resolution of complaints, and paper-work had to be completed. He asked, “Can you imagine that 60 days is enough?”

Lack of time was compounded by lack of resources. Of the 60 days, only 20 were available for investigation of complaints in the field, and this work, he said, had to be carried out by the nine Council members themselves. The Council member portrayed the ability of the Council to contribute to resolution of conflict as being undermined by a law which made great demands of the Council, while denying them the time and resources to fulfil them. This caused a dilemma—following the law would not permit effective intervention in conflict, but “if we violate the law, we will not be recognised.... We want to have a rule of law.”<sup>15</sup>

The dilemma facing the Constitutional Council in this respect is significant, because this agency was intended to operate as a safety valve. Although the NEC was given first review of complaints arising from the electoral process, the right of appeal was intended as a check upon the NEC’s work, providing an independent arbiter of complaints that arose between the NEC and the political parties over the conduct of the election.

The Constitutional Council’s mandate extends beyond electoral periods. The Council has a duty to examine any complaints of unconstitutionality made against the activities of any branch of government. Arguably a further significant factor contributing to the failure of the Constitutional Council to stamp its authority on the electoral process was the fact that the very issue of the council had long been ignored by the government. The Constitutional Council should have been set up soon after the promulgation of the Constitution in 1993, and the King named his three appointees at this time. The coalition government of 1993–97 allowed the question to lapse, and the Council was not established until May 1998.

This had two effects. First, the delay in establishing the Council undermined its role as an essential institutional feature of the new Kingdom of Cambodia, representing the authority of the Constitution, operating as a key legitimising agent for all governmental activities, and as a symbol of the accountability and legality of the new regime. Five years from 1993 to 1998, which could have been spent investing in the political capital of the Constitutional Council as a valued mediator of conflicts, had been wasted in this respect.

Instead, the Council appeared to be low on the list of governmental priorities, a position which offered little prestige. One member of the Council commented:

“As for the Constitutional Council, people are not aware of us. They don’t bring complaints, so we can’t act. And members of parliament, if there is a problem with the laws, they have to request us to examine them. Sam Rainsy might do something like this. But we haven’t received any [complaints] yet.”

The failure of the 1993–97 coalition government to act speedily and decisively on this issue weakened the potential impact of the Council on the 1998 election considerably.

<sup>14</sup> Kingdom of Cambodia, *Constitution*, Phnom Penh, 1993, Article 117.

<sup>15</sup> Bin Chinh, Constitutional Council Member, presentation at the *Conference on the Prevention of Conflict in the Commune Election*, Phnom Penh, 16 June 1999.

Second, Council members themselves had little time to get to know one another, or to establish a sense of organisational cohesion among themselves. A particular problem were accusations levelled by Council members at one another, casting doubt on the validity of each other's educational qualifications and manner of appointment. One member of the Constitutional Council interviewed for this study commented:

“After we all met, we understood one another... Once we came together, we understood one another. We went to Siem Reap together and we got to know one another's abilities, and then there was no problem. There was only a problem before the Constitutional Council members got to know each other.”

Again, this comment underlines the fact that the late establishment of the council constituted a lost opportunity. Complaints over the appointments and qualifications of members, and the dispute over which member had the right to convene the first meeting, should have been resolved long before the election. This would have offered an opportunity for the Constitutional Council to prove its ability to resolve disputes fairly and to build up a reputation for wielding legitimate political power. Yet the lack of time available entailed that conflicts followed rapidly one upon the other, through the middle of 1998, building up a legacy of distrust which undermined the ability of the Council to act authoritatively.

Like the controversy surrounding the NEC, the failures of the Constitutional Council were failures of institutionalisation, and are thus highly relevant to the question of building new electoral agencies for future elections at different levels of government. Although political power can be awarded through the provision of finances and access to the means of coercion, political authority is more difficult to acquire. Dispensing with the use of force entails building political institutions which can compel others to act through the legitimacy of their power. Legitimacy emerges from legality, the development of a reputation for just decision-making, and the perception of upholding a higher interest than the interests of particular political parties. Acquiring this kind of power requires the ability to act consistently over an extended period of time. Deprived of the ability to develop its authority, the Constitutional Council was perceived as a pawn of a political game, and lost its authority as a result.

The problems faced by the Constitutional Council reflect the failure to implement properly the package of checks and balances envisaged in the Constitution for providing stability to the Cambodian state. This again reflects the power of political parties who from 1993 blocked the smooth establishment and running of such state agencies, because of their sectional interests. It further reflects the unwillingness of political parties to release state agencies such as the Constitutional Council from their own purview. The wrangling over appointments and power-sharing, which characterised the coalition government from 1993–97, made it difficult for supposedly “neutral” state agencies to move away from formerly politicised identities.

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## **8. Wider Features of the Post-Electoral Environment**

Although the institutions which formed the complaints procedures were seen as flawed, there were further aspects of the post-election environment which exacerbated conflict. First, insecurity intensified drastically after the elections. The UNCOHCHR reported “widespread verbal intimidation and threats” against opposition candidates, activists, local representatives and agents in the post-electoral period. It investigated 75 credible complaints of intimidation, and also noted that:

“Several hundred people left their homes and villages in the immediate wake of the election, and sought temporary shelter in the district, provincial or capital party offices, or somewhere else with relatives. In the majority of cases, people fled because of actual threats or other acts of intimidation that were made against them. A number of people feared potential retribution because of their political affiliation, activities or preferences.

Others have fled because they feared the threats made against them before the election might be carried out after the polls.”

Perpetrators identified by the UNCOHCHR included “village and commune chiefs or their subordinates, members of local militia, police and the army.” Other threats were made by masked men “making known their vehement intolerance of political opposition members and supporters.”<sup>16</sup>

Despite a speech by then-Second Prime Minister Hun Sen decrying these practices, and their apparent subsequent cessation, large numbers of opposition party activists arrived in Phnom Penh shortly after the elections and the first emergence of results. The arrival of opposition activists in Phnom Penh strengthened the ability of the opposition parties to contest the results, as their human resources became intensely concentrated, with many activists sleeping at the party headquarters.

The common practice in Cambodia of seeking political protection rather than judicial recourse in the face of incidents of violence and intimidation also contributed to the political crisis. In the face of the atmosphere of intimidation in the provinces, demands made by local activists for support from their own political leaders also made it more difficult for NUF leaders to accept a CPP victory. Distrust of the judicial system entailed that no recourse other than political demands was seen as being available to local victims of intimidation and their leaders in Phnom Penh.

Furthermore, the confusion exhibited by the NEC, following the widespread speculation over the results in the days immediately following polling day, fuelled NUF suspicions and gave them little opportunity to retreat from earlier demands and criticisms, had they wished to. Rather, as complaints were rejected and recounts abandoned, the opposition were allowed no bridges over which to retreat. As all avenues for opposition disappointment and protest were abruptly cut off, it was likely that the opposition leaders would mobilise their own supporters in an attempt to make their voices heard.

More generally, the apparent dichotomy between the election atmosphere and profile of political support in Phnom Penh on the one hand, and rural areas on the other, is problematic in an environment where information travels poorly. Extra efforts must be made to promote allegiance to, and authority of, the NEC if voters in constituencies such as central Phnom Penh, which are FUNCINPEC and SRP strongholds, are to believe that the apparently radically different preferences existing elsewhere are not the product of fraud but of genuine pluralism within the nation.

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## 9. Conclusion

The experience of the NEC and the Constitutional Council shows that the work of fulfilling technical and organisational tasks efficiently, and building political authority and allegiance, can sometimes conflict. In 1998, both organisations focused on the technical aspects of their mandate as defined by law, pointing out that lack of time and resources made this challenge a considerable one. Doing so required trading off political authority in the eyes of the NUF for technical expedience. Although this permitted the efficient organisation of the electoral process, it also contributed to the refusal of the NUF parties to accept the authority of the NEC or Constitutional Council after the elections.

Members of the NEC and the Constitutional Council pointed to legal provisions and material constraints which in some cases forced such dilemmas upon them. In other cases, the highly politicised atmosphere, particularly in the early stages of the process, as the NUF politicians returned to Cambodia, and following the release of results, meant that exercising political control was highly problematic. Some interviewees suggested that political problems were appropriately the

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<sup>16</sup> SRUNSGHRC, *Monitoring of Election-Related Intimidation and Violence, Post-Election Period, Report, 26 July – 18 August 1998* (Phnom Penh: UNCOHCHR, 1998) p. 2.

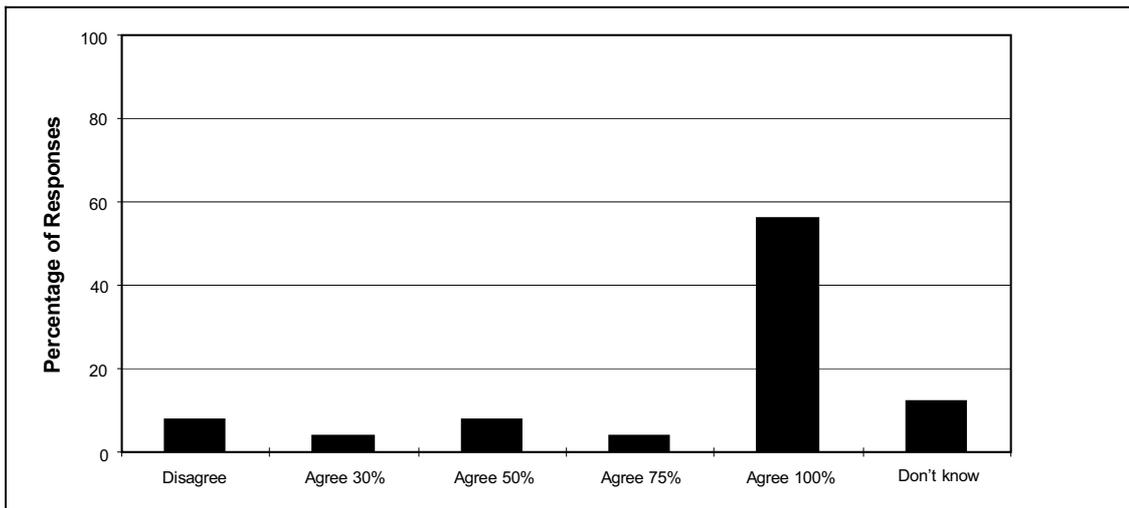
preserve of the parties, and the rightful role of the NEC and the Constitutional Council was purely a technical one.

Institutionalised organisations often emphasise the technical aspect of their work, because institutionalisation by definition implies that the work of the organisation is not the subject of highly polarised political conflict. In Cambodia, lack of institutionalisation implies that political problems will continue to arise, and need to be addressed alongside technical questions. Some aspects of the political problems of 1998, and possible approaches to them, have been discussed in this chapter. Formulating in a more self-conscious way a coherent strategy for pursuing the aim of political authority and allegiance is a task for political parties, for the legislators who create the mandate of election organisations, and, crucially once the election process is underway, the staff who run them.

## Security

In contrast to 1993, the 1998 election passed relatively peacefully, with few incidents of violence disrupting polling or vote counting. As indicated in Figure 5.1, almost all NGO interviewees participating in this study agreed that violence in 1998 was much less frequent than in 1993.

**Figure 5.1. Perceptions of Conflict:  
“Acts of Violence Which Occurred in the 1998 Election Were Fewer than in the 1993 Election”**



Figures collated by the United Nations support this conclusion. In 1993, more than 200 people were killed in murders associated with the elections (Koul 1998: 37). During the 1998 election, between 20 May and 20 August, the number of killings with apparent political motives was estimated by the UNCOHCHR to be between 16 and 22. Thirteen of these victims died in two attacks by “Khmer Rouge” soldiers in Anlong Veng.<sup>1</sup> The 1998 electoral period also compares favourably, in this respect, to other periods in the past two years. UN figures are as follows:

- July to August 1997: 40 to 60 people killed;<sup>2</sup>
- August 1997 to April 1998: 33 people killed;<sup>3</sup>

<sup>1</sup> SRUNSGHRC, “Monitoring of Election Related Intimidation and Violence, Report, 19 August – 23 September 1998, p. 1.

<sup>2</sup> UNCOHCHR, “Memorandum to the Royal Government of Cambodia, Evidence of Summary Executions, Torture and Missing Persons Since 2–7 July 1997,” Phnom Penh, 21 August 1997.

<sup>3</sup> SRUNSGHRC, “Memorandum to the Royal Government of Cambodia,” 13 May 1998, pp. 7–37.

- 1–16 September 1998: two people killed, 50 allegedly disappeared, and a further 16 bodies, apparently the victims of extra-judicial killings, found.<sup>4</sup>

Despite this relative success, interviewees nevertheless referred to conflicts which arose during the election period that related to security. Two specific conflicts will be examined here:

- The conflict over whether intimidation was widespread, and whether it affected voter decisions; and
- The conflict over whether political killings took place.

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## 1. Conflict over Allegations of Intimidation

### 1.1. *Problems of Fact and Interpretation*

The major stated concern of all political parties and electoral organisers was to ensure that voters could vote for the party of their choice without fear of reprisals. Despite this apparent unanimity, a range of electoral participants and observers noted election-related fears among voters. In interpreting these fears, supporters of the CPP and supporters of the NUF parties differed on one central question: were these fears the result of a significant and deliberate campaign of intimidation by a political group, or were they a natural consequence of Cambodia's turbulent history for which no political party could be held solely responsible?

The UNCOHCHR defined "intimidation" as "an incident in which fear has been used to influence or control people/an incident aimed at intimidating members of or workers for a political party." This definition implies deliberate agency by a supporter of a political party, rather than merely an unprompted response by individuals to their own pre-existing fears.

Establishing intent in cases of fear is problematic, and consequently, questions of intimidation are likely to elicit significantly politicised responses. The perspective on this question offered by CPP interviewees differed markedly from the perspective offered by NUF interviewees. One CPP interviewee who participated in this study regarded cases of intimidation as scattered and unsystematic, and as inevitable in a war-torn environment. He denied the existence of a sustained campaign which could undermine the credibility of the election result:

"There was a problem of violence and intimidation, but the violence didn't have any effect. There were threats—[even though ]now we had ended the war, there was still fear, still Khmer Rouge, still people who take advantage to pursue illegal activities. There was a little bit of that, but it didn't affect the outcome of the election."

Another CPP interviewee commented that complaints of intimidation emerged from misunderstandings of attempts to promote security by those who were intended to benefit from security measures:

"Some people think that the local authorities and the NEC were very bad, because we cannot yet separate neutrality and politicisation. For example, if one party wants to campaign in a commune, then they must give information to that commune authority so that the commune can ask the police to protect them. But then some people say that the police intimidated them. This is a problem of neutrality and politicisation."

This interviewee regards pre-existing distrust between members of opposition parties and state agencies as undermining well-meaning attempts to protect political freedoms. The problem is cast here as a problem of lack of institutionalisation in an environment characterised by lack of trust between the parties, rather than a problem of deliberate attempts to use fear to influence or control. The interviewee implies that the passage of time offers an opportunity for greater mutual understanding and the building of greater trust.

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<sup>4</sup> Thomas Hammarberg, Statement, New York, 16 September 1998. For the purposes of this study, the electoral process is viewed as ending with the decision of the Constitutional Council in September.

According to these interviewees, fears and isolated acts of intimidation were a symptom of the continued lack of cohesion of the political community. From this perspective, the relative lack of violence during the 1998 election period will allow an amelioration of fears during Cambodia's next electoral exercise, as voter expectations of the level of violence inherent in an electoral environment are adjusted downwards as a result of the 1998 experience. By this means, consolidation of democratic processes and a lowering of political tension can gradually be achieved.

NUF party (and some NGO) interviewees disagreed with this prognosis, and offered two main arguments. The first argument suggested that intimidation did take place and was widespread, but covert. A second argument suggested that a relative lack of incidents of violence and intimidation did not represent a lack of intent on the part of CPP supporters to intimidate. Rather it reflected an anticipation and pre-empting of this intention by voters and NUF party supporters, who surrendered to threats in advance of their being made. This argument suggests that while few observable incidents took place, the intention to use fear to influence and control was present, and the presence of this intention was sufficient in itself to succeed in its aim.

The latter argument was presented with reference to earlier examples of violence, particularly in 1993 and 1997. Examination of the causes of violence in 1993 and 1997 is beyond the scope of this study. It is sufficient here to note that some interviewees claimed that earlier violence, and in particular a lack of measures taken to prevent its recurrence, had rendered voters sensitive to the wishes and intentions of the allegedly partisan authorities. They further alleged that members of the local authorities or of the CPP took advantage of this heightened awareness to advance their chances of winning the 1998 elections.

For example, the NUF parties commented in a statement on 17 April 1998 that the laws comprising the legal framework for the election:

“...were adopted in the wake of the last July coup d'état in an atmosphere of fear and intimidation, and reflect the objectives of the ruling CPP. These laws contain many provisions which are unconstitutional, undemocratic and unfair and are definitely biased in favour of the CPP.”<sup>5</sup>

Some interviewees also suggested that voters and NUF campaigners were affected by a similar “atmosphere,” which dictated cautious behaviour, limiting freedom and obviating the need for actual “incidents” of intimidation. At the same time, this cautious behaviour was alleged to have expanded the freedom of (wrongful) action of allegedly partisan local authorities, in the interests of the CPP. For example:

“Maybe people are fed up with democracy now. When Cambodian people find out about the authorities doing something wrong, they don't report it because they are hesitant about their security. The authorities frighten people, and they have no lawyer or anyone to protect them.... If we depend on the international community, they cannot protect people inside the country, so the people don't respect them. They respected them the first time, but no one took any notice of the fact that people were dying. So the people give up and they stay safe.”

“If violence means killing, it is true that there was less than in 1993. But if we talk about fear, and the problems of tricks, lack of transparency, then 1993 and 1998 were the same.... The people who campaigned for the losers don't dare to go to particular areas. What does this mean? They had the experience of 1993, so they ran before they were killed. In UNTAC time, they thought UNTAC would protect them. This time they simply didn't dare to go.”

According to these interviewees, the lack of violence in 1998 was the result not of increased inter-party tolerance, but of surrender by NUF supporters to the inevitability of a curtailment of their

<sup>5</sup> NUF, “Conditions for Free and Fair Elections,” 17 April 1998, p. 2.

rights and freedoms. This surrender, in itself, was viewed as a direct result of the use of fear by authorities sympathetic to the CPP, to influence or control the political environment.

An interviewee from a state agency, who was associated with an NUF party, offered a similar explanation of decreased violence in 1998:

“Since the July fighting, from that time on people no longer believed in democracy. Like during the [Democratic Kampuchea period], the people became fatalists. Now they don’t bother about politics. The government takes advantage of that. People don’t risk their lives.... If possible, they try to survive and send their children to school. And the government does what it wants. In the cities there is concern, but not in the countryside.”

Two NGO observers interviewed argued that there was a disparity between freedom in the cities, where fear was believed to be less, and in the countryside, where fear was perceived to be stronger. One commented:

“In Phnom Penh [parties could travel freely], there were many international observers so [the authorities] could not do anything illegal, but in the remote areas it was easy for them, especially for the local authorities. Sometimes people were shot dead if they didn’t do something.”

These interviewees allege employment of strategies of *anticipatory surrender* on the part of potential victims of violence in 1998. They believed that Cambodians imposed restraints on their own actions, for fear that reprisals would follow if they behaved in a manner contrary to the wishes of local power-holders. For these reasons, they claimed, acts of violence decreased in number, but voter decisions were nevertheless affected and the freedom of choice offered by the election was reduced.

In many of these accounts, the actions of local authorities were considered to undermine the pro-democratic statements made publicly by CPP leaders. Some alleged that secret instructions from the centre to local party members contradicted the public pro-democratic stance of the central CPP leaders. The failure of international observers to offer adequate protection to rural voters was also viewed as contributing to voters’ fears.

The sources of difference between interviewees on this subject included disagreements over fact, as well as differences of interpretation, perspective and background belief. Disagreements of fact with regard to the events of July 1997—in particular, over who began the fighting and why, and who merely responded to it—prompt continuing differences in imputing responsibility for continuing fear among Cambodian citizens.

Among NUF parties, it was common to view the violence of July 1997, and killings of FUNCINPEC members which continued until March 1998, as caused by the CPP and as directly affecting the ability of the NUF parties to compete in the elections. Furthermore, the violence of July 1997 was viewed by NUF party supporters as the major defining feature of the environment surrounding the 1998 election.

The post-July 1997 government, by contrast, in which the CPP was a dominant force, viewed the fighting of July 1997 as caused by NUF irresponsibility in its relations with the former “Khmer Rouge.”<sup>6</sup> Furthermore, a number of security measures aimed at promoting a secure environment for elections were put in place by CPP leaders following the departure of NUF members from Phnom Penh in July 1997, namely:

- The eight-point security plan of then-Second Prime Minister Hun Sen, announced in August 1997, to reduce, in particular, the carrying of weapons on the streets;

<sup>6</sup> These views can be found in, respectively, Prince Norodom Ranariddh, interview, “Triumphant Return to Le Royal Lobby,” *Phnom Penh Post* 10–23 April 1998, p. 5; and Ministry of Foreign Affairs, *Background on the July 1997 Crisis: Prince Ranariddh’s Strategy of Provocation—White Paper* (Phnom Penh: Ministry of Foreign Affairs and International Cooperation, 9 July 1997).

- Written guarantees of security offered to NUF parties, via the United Nations, by then-Second Prime Minister Hun Sen in October 1997; and
- The setting up of UN monitoring agencies to liaise with the Cambodian police and to monitor the safety of returning NUF politicians from December 1997.

The CPP, and Hun Sen in particular, claimed that promoting security for the election was their major aim and repeatedly made public statements which announced their intention to respect the election results and the rights of voters and parties. For them, the security measures taken were more important than the preceding violence in constituting the security environment of 1998. In particular, in their view, these public disavowals of violence and intention contradicted NUF allegations about their covert intentions. Given this different perspective, and the effectiveness of security policies in ensuring that few acts of violence occurred during the elections, suspicions arose among the CPP that NUF parties made false accusations of violence and fear in order to gain international support.

The differing views of the security situation remained unresolved because of a number of wider elements to this conflict. A particular problem in attempting to promote convergence in understanding is the difficulty of proving or disproving claims that particular individuals were afraid, or that their fear stemmed from a correct analysis of unspoken intentions on the part of authorities. Fear makes the testimony of those alleged to be suffering from it inherently unreliable. Furthermore the difficulty of distinguishing irrational from rational fears—either one's own or someone else's—entails a difficulty in determining the cause of fear, and whether it is self-imposed, a legacy of traumas long past, or a result of human agency.

Although this problem admits the possibility that claims of intimidation may be falsely made, it also entails that strategies deliberately aimed at provoking fear are easily disguised. Analysis of reports of intimidation made to FUNCINPEC candidates in two districts of Kandal province found that the “threats” reported were often vague; were sometimes made indirectly; were often only rumours that threats had been made; or, on occasion, were threats which had not been made in reality but which the subject feared might be made in the future.<sup>7</sup>

Such “threats” were seen by NUF party members as representing voter awareness of the hegemonic nature of local authority control. Hegemony in this context means a control which is taken for granted, and does not need to be reiterated through the use of threat or other incident. According to the NUF parties, voters were subject to a more powerful CPP hegemony in 1998, as opposed to 1993, and consequently there was less need to employ intimidatory incidents to force compliance. Such claims are not easily confirmed or refuted with reference to evidence. In cases where fears are based on threats that appear vague, it is open to each side to impose their own beliefs and expectations in interpreting the complaint. On such questions, divisions in the political community become pronounced, as responses to allegations are greatly influenced by predilection and political sympathy. This makes the resolution of conflict much more problematic.

Other reports of intimidation were investigated by UN staff and were found to have a concrete basis in the deliberate actions of party members.<sup>8</sup> These included physical attacks on individuals and property, as well as threats and attempts to force members of other parties to join the CPP. In the case of threats of violence made immediately after election day, the UN noted that these

<sup>7</sup> See Caroline Hughes, “Surveillance and Resistance in the Cambodian Elections, The Prisoners’ Dilemma?” *South East Asian Affairs 1999* (Singapore: Institute of Southeast Asian Studies, 1999).

<sup>8</sup> For details, see SRUNSGHRC, *Monitoring of Election-Related Intimidation and Violence, 15–27 June 1998* (Phnom Penh: UNCOHCHR, 1998); *Monitoring of Political Intimidation and Violence, 28 June – 5 July 1998* (Phnom Penh, UNCOHCHR, 1998); *Monitoring of Intimidation and Violence, 10–17 July 1998*, (Phnom Penh, UNCOHCHR, 1998); *Monitoring of Election-Related Intimidation and Violence, Post-Election Period, 26 July – 18 August 1998* (Phnom Penh, UNCOHCHR, 1998); *Monitoring of Election-Related Intimidation and Violence, 19 August – 23 September 1998* (Phnom Penh, UNCOHCHR, 1998).

events declined after a statement made by then-Second Prime Minister Hun Sen calling for an end to intimidation.<sup>9</sup>

The discovery of evidence for intimidation by the UNCOHCHR in 113 of 138 of the complaints submitted to them could be viewed as lending support to the position of those who believed that intimidation was rife and that sanctions would be attached to open support for NUF parties. Yet these findings are insufficient to refute the claim that, as one CPP interviewee commented, “compared to the violence and intimidation in 1993, [the problem of intimidation in 1998] was very small.”

It remains unclear how many voters were affected by this kind of problem, and whether it could have had a decisive effect on the election result. Interviewees associated with the CPP tended to associate the decrease in incidence of violence with an expansion in the freedoms of voters. A senior member of COMFREL disagreed:

“They were cleverer than in 1993, they targeted only some activists. Not everyone was scared. In 1993 they killed without selection. Now they targeted people who were influential and popular. Even if they were shot, it was not done in the same way, [but] like a robbery case. In Prey Veng, they took a man’s cow and killed him, and said it was robbery. It causes confusion in public opinion, but opposition activists were very scared.”

The suggestion here is that the decrease in violence is permitted by an increasing sophistication in violence, with the identical net result of reduction in the freedom of NUF campaigners to attempt to win votes for their parties.

### 1.2. Problems of Political Institutions

Weaknesses of political institutions become particularly problematic in this context. Trust in competent authorities operates as an antidote to widespread fear. In Cambodia, the politicisation of perceptions of state agencies means that on occasion during the election period, the activities of the security forces exacerbated, rather than alleviating, fears. For example, shortly before the election in 1998, movements of troops being deployed to the provinces to provide security for the election led to rumours in Phnom Penh of an impending military coup.<sup>10</sup>

The institutional weakness of the Cambodian security forces is indicated in attitudes towards them expressed by participants in this study. For example, NGO interviewees gave equivocal responses to the statement, “the armed forces took a neutral stance towards with regard to political parties and voters,” as shown in Figure 5.2. Many said they did not know if they agreed with the statement, while no interviewee agreed 100 percent with the statement.

This institutional weakness may be seen as contributing to conflicting attitudes towards issues of fear and intimidation during the election period. Commenting on the performance of the armed forces during polling, almost all interviewees agreed that the armed forces did a good job, as shown in Figure 5.3. For example:

“I didn’t see any case of oppression by the military against any political party during the election process. When the NEC organised the security of parties during the election campaign it was very good.”

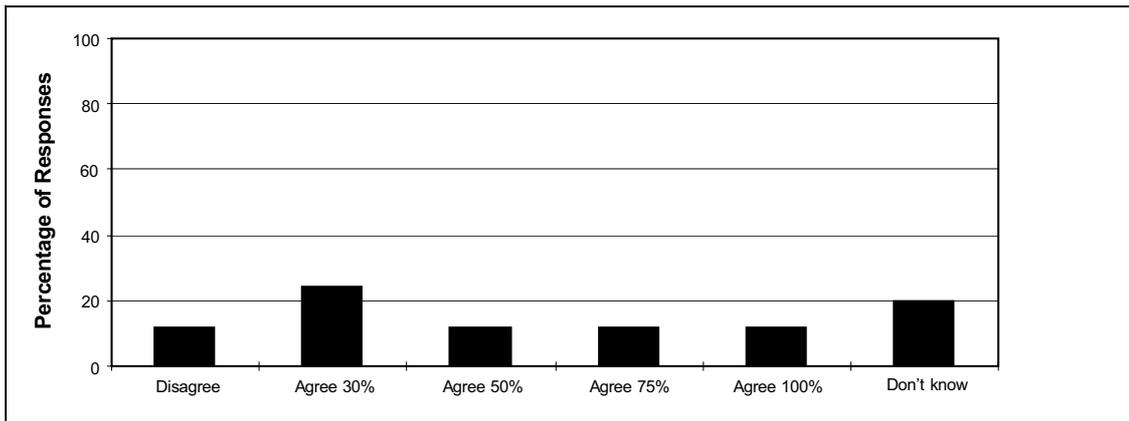
Despite this impressive performance, some interviewees added that the presence of security forces for them did not inspire trust. For example:

“The security forces protected, but we were scared anyway.”

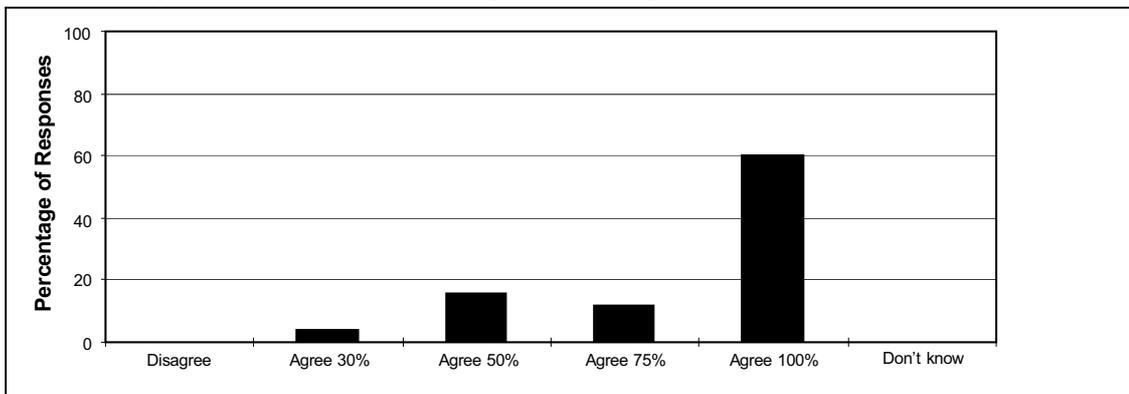
<sup>9</sup> SRUNSGHRC, *Monitoring of Election-Related Intimidation and Violence, Post-Election Period, 26 July – 18 August 1998* (Phnom Penh, UNCOHCHR, 1998), p. 2.

<sup>10</sup> “Rainsy Asks for the Border to be Closed for Seven Days,” *Rasmei Kampuchea*, 20–21 July 1998, p. 1.

**Figure 5.2. Perceptions of Organisations:  
“The Armed Forces Took a Neutral Stance with Regard to Political Parties and Voters”**



**Figure 5.3. Perceptions of Organisations:  
“The Security Forces Ensured the Security of the Voting Environment”**



“There were no threats, but in their minds people were scared. ”

Although security initiatives were successful in promoting a peaceful environment, they were not successful in dispelling fear, according to these two interviewees. It is significant in this respect that some acts of intimidation investigated by the UNCOHCHR involved the deployment of armed and uniformed soldiers or village security forces outside party offices or in registration stations. Such deployments were classed by UNCOHCHR staff as “intimidation,” and viewed as threatening rather than as improving security.<sup>11</sup> The potential threat inherent in the presence of security forces during electoral procedures was acknowledged by the NEC, which banned the wearing of military uniforms and the carrying of weapons in polling and counting stations. Other

<sup>11</sup> A confirmed example of the former is reported as having occurred in Kampot provincial town on 30 April, when “two armed soldiers stood in front of the Cambodia National Sustaining Party Office for about one hour,” SRUNSGHRC, *Monitoring of Election-Related Intimidation and Violence, 15–27 June 1998*, (Phnom Penh: UNCOHCHR, 1998), p. 6. “Armed uniform men present at voter registration booths” was reported as a confirmed act of intimidation occurring in Pursat on 18 May, SRUNSGHRC, *Monitoring of Election-Related Intimidation and Violence, 15–27 June 1998*, (Phnom Penh: UNCOHCHR, 1998), p. 6.

complaints confirmed by the UNCOHCHR involved action by soldiers, for example in removing party signboards.<sup>12</sup>

Lack of institutionalisation of wider protective safeguards, such as the police and courts, further contribute to a feeling of insecurity. The lack of institutionalisation of electoral procedures for transferring power also contributes. In the past, transfers of power in Cambodia have been associated with violence, and memories of this are likely to increase the sensitivity of voters and campaigners to any suggestion that violence is likely to reoccur in an electoral context.

### 1.3. Problems of Political Community

Above all, such allegations reflect the lack of political community between the NUF parties and the CPP. Allegations of secret intentions and manipulation reflects the great distrust which lingers between the parties. Fear of violence reflects the vulnerability of a population which has long suffered the effects of war. Given the presence of fear, the lack of political community between the different parties quickly led to accusations of manipulation and unfair behaviour.

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## 2. Allegations of “Political Killings”

A particular instance of conflict was the different explanations offered by different organisations for acts of violence which occurred. NUF party members claimed a number of cases were politically motivated, while police blamed private motives. The comments of two senior Ministry of Interior officials interviewed for this study, one a member of the CPP and one a member of an NUF party, exemplified the difference of opinion on this question:

“Sometimes there is a case, someone is driving a car, there is an accident. He is a member of a political party. So they say it is a political case, politically motivated. This is a very big problem.”

“They say it is robbery and it is just a coincidence that they are members of political parties. But I say you can’t have too many coincidences.”

Once again, the problem stems from disagreements of fact, and differences in interpretation, reflecting weaknesses of institutions and political community. A particular problem in this case is the weakness of trust in investigating authorities. In cases of violence where opposition parties alleged political motives, both the police and staff of the UNCOHCHR undertook investigations.

The UNCOHCHR concluded that, from 49 investigations into allegations of political killing, political motives were established in 16, both private and political motives were established in six, no political motives were established in 20, and insufficient evidence of motive was available in the remaining seven. Twenty claims by political parties that political killings had taken place thus were rejected by the UNCOHCHR. In 16 of these cases, the victims were NUF party members, and in four they were CPP members. Four cases which had previously been declared by local officials and police as privately motivated, were later assessed as political cases by the UNCOHCHR. A senior Ministry of Interior official explained the latter discrepancy in terms of institutional weaknesses in the police force:

“We recognise that sometimes the investigation didn’t happen, not just during the elections but in normal times also. At the present time we have cases which we can’t investigate, because of the police or because of our capacity.... How many of our police are skilled? Not many. We have no police academy. Most of the police are not trained. But I understand that the government has a good policy. It wants a neutral, independent, uni-

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<sup>12</sup> A confirmed example of the latter was reported as follows: “Municipal authorities, including armed soldiers and police lined the road and felled an SRP signboard,” SRUNSGHRC, *Monitoring of Election-Related Intimidation and Violence, 28 June – 5 July 1998* (Phnom Penh: UNCOHCHR, 1998), p. 4.

fied and efficient administration. Especially neutral. This is very easy to say but difficult to do.”

The weakness of the security services, and claims by NUF parties that they were partisan towards the CPP and failed to investigate killings of NUF members for political reasons, contributed to the atmosphere of tension surrounding the elections. Both the technical inadequacies of the police and the politicisation which surrounds interpretations of their activities prevents the police from pronouncing authoritatively on the causes of death in such cases. Consequently, investigations by police currently play little role in conflict resolution, in cases, such as political killing, where a crime has been committed.

The failure of the police to make any breakthroughs in bringing perpetrators of killings of NUF party members to trial contributes to the distrust of the police felt by members of NUF parties. This is potentially dangerous in situations where policing of NUF demonstrations is required. Although the question of prevention of large-scale political violence appears to have been adequately addressed during the 1998 election period, the question of improving relationships between police and opposition party members had not begun prior to the election. Improvements in this respect were severely impeded by the ineffectiveness of the police in investigating crimes in which opposition party members are the victims.

Consequently, relations between NUF parties and the police resemble a vicious circle. The failure of the police to bring people to trial for abusing the rights of NUF members increases distrust in the police on the part of the NUF. This in turn disinclines the NUF to believe police assessments of cases judged non-political, and to view such assessments as politically motivated and as further evidence of police politicisation. This kind of vicious circle is highly pernicious to the promotion of community relations between parties.

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### 3. The Effect on Voters

The secrecy of the ballot was intended to reassure voters that their voting decisions would never be revealed, and thus to protect their freedom to choose, which forms the basis of democratic legitimacy. Most representatives of NGOs, many of whom took part in the campaign to educate voters about the secret ballot, indicated in interviews that they agreed with the statement, “most voters believed that their vote was secret”, as shown in Figure 5.4. Two interviewees dissented slightly, commenting:

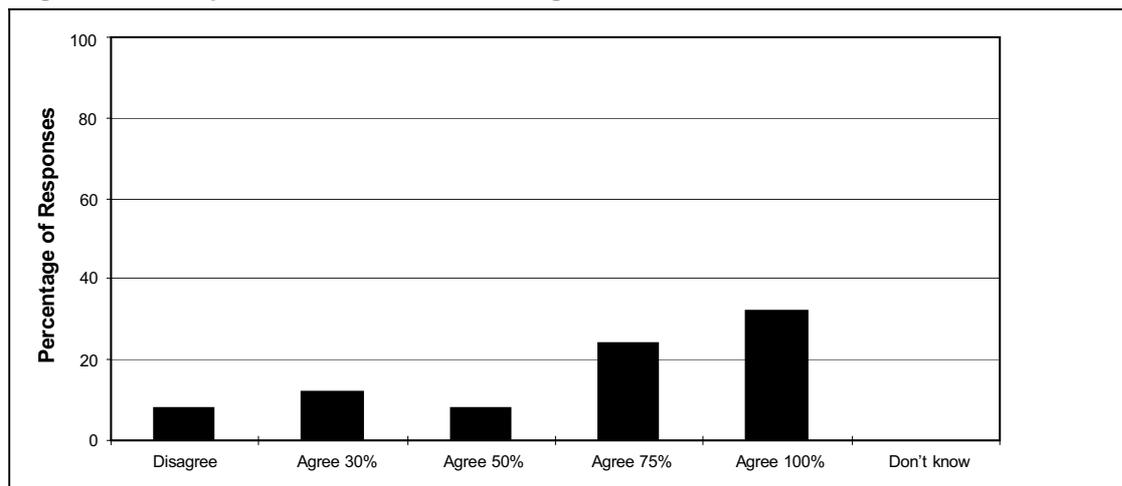
“Eighty percent were secret. Sometimes people discussed together while they were voting, or sometimes there was a window behind which the local authorities could stand and watch.”

“In some places they came to watch from behind; 70 to 80 percent were secret, but sometimes the party or CEC person stood right behind. I’m not saying it was intimidation, but sometimes they could see.”

In general, NGO representatives rated the attempt to preserve secrecy successful.

It is often considered that the secrecy of the ballot protects voters and allows them to vote according to their conscience despite intimidation. Yet many NGO and opposition party representatives complained that voters were intimidated by the presence of members of the local authorities in and around the polling station. Two NGO interviewees commented:

“Outside, the security officers were mostly police. Some were activists of the CPP, like the president of the party for that area. That had an effect on the voters—when they saw the head of the police outside, they were not happy. They were not supposed to have police with arms around the polling station, but there still were some.”

**Figure 5.4. Perceptions of Voter Understanding: “Most Voters Believed Their Vote Was Secret”**

“On election day I was an observer, I went to Kravanh district in Pursat, far from National Route 5. Other international observers stayed mainly on the national road. The voters came to vote, but, in my view, on their faces, sometimes they were afraid about going to vote. Many knew about the vote and the ballot, but they didn’t talk. The problem was the local authorities, the military, the police.”

In response to the statement, “The activities of local authorities were a major influence on the election result”, most NGO representatives agreed to some extent (as illustrated in Figure 4.5 above). Some comments more favourable to the local authorities were as follows:

“Most local authorities were no problem. Only 25 percent were a problem.”

“It’s not true that the local authorities caused the election result. The popularity of the parties was more important. The local authorities conducted various activities, but the people know who they love in their hearts.”

Several NGO observers, as well as members of the NUF parties, nonetheless believed that the activities of local authorities did have some effect, and were concerned that the presence of members of the local authorities in polling stations affected voter choices in some circumstances. Of particular concern are NUF claims that members of the local authorities or political parties gave voters pre-marked ballots to take into the polling station, or ticked the ballot on behalf of voters inside the station.

The nature of the secret ballot is problematic in that it precludes a definitive settlement of the question of whether intimidation affected voter choices, since voter choices are not revealed. Furthermore, the emphasis placed by all parties on the need to keep voting decisions strictly secret precluded the use of strategies such as exit-polling to gain a nationwide impression of voter decisions. When carried out professionally and impartially, such polls can pluralise sources of information about voting, operating as a check on the likelihood of large-scale electoral fraud and supporting the announcements of electoral officials.

Without such supplementary information about national voting patterns, political party supporters are likely to remain highly partisan in their beliefs about the nature of the preferences of their compatriots. This was observable shortly after the elections, as NUF party supporters and demonstrators declared their conviction that “90 percent” voted for FUNCINPEC and the SRP.

To protect and demonstrate the democratic legitimacy which springs from freedom of choice, and to contribute to procedural legitimacy by means of exit-polling and open debate, it is important for state agencies to prevent intimidation and act decisively to reduce fear. Reliance on the

secret ballot as an antidote to intimidation, insecurity and fear may be effective, but by its very nature, it cannot demonstrate its own effectiveness unless supplemented by more open forms of debate and information collection.

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#### 4. Conclusion

Although incidents of violence were reduced in 1998 as compared to 1993, fear remained. It is likely that fear will continue to surround the question of transfer of power for many years, until electoral procedures have become an institutionalised means of resolving power disputes, and violent power struggles have faded in memory.

The essential question underlying the two conflicts described above is whether the relative lack of violence in 1998 represents a step towards such institutionalisation. The NUF parties claimed that it did not. They argued that rather than illustrating increased political tolerance, the lack of violence in 1998 simply reflected a greater hegemony on the part of the CPP—over the legislative framework of the elections, the security environment, and the terms of election campaigning. The relative peace of 1998, they argued, reflected a lack of courage on the part of voters to challenge that hegemony, and the policies of anticipatory surrender adopted as a result.

Such an argument is not easily proven nor refuted from direct observation or tangible evidence. This is because the argument is dependent on the existence of fear among voters. Fear is impossible to observe with any certainty or accuracy. Consequently, a resolution of these conflicts at the level of investigation of fact or convergence of interpretation is difficult, particularly as it is in the political interests of each party to maintain opposing views on the subject.

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**contributes to perceptions of their politicisation. The emergence of competent and non-politicised security institutions, which effectively protect individuals from the effects of violence, would offer a way out of the vicious circles of accusation and counter-accusation which currently characterise discussion of security issues in Cambodian politics.**

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## **National Observer NGOs**

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The variety of tasks undertaken by national observer NGOs has already been described in Chapter Two. Their function was characterised by an interviewee from COMFREL as follows:

“We must strengthen COMFREL to become a real arbitrator. We must have moral authority enough that we can stabilise the situation and solve conflicts. We need to strengthen our credibility more. We must not let the players destabilise the situation. It is a tradition in Cambodia that the loser always makes trouble. That is the reason why we need to strengthen the credibility of local observers. When the local observer says free and fair, everyone must accept that.”

Another NGO interviewee commented on the role of national observers:

“The point of NGOs is to make the commune election law more technical than political, to move away from the political agenda to a technical and social agenda.”

The latter comment indicates the role that observer NGOs have to play in supporting the NEC. By boosting the authority of election results, and promoting allegiance to the elections, the NGOs can help to promote an electoral hegemony, which can remove the kinds of political problems that dogged the NEC in 1998. This leaves the NEC free to focus on technical aspects of the election, while the attention of the political parties is centred on their agendas for social reform.

In achieving this objective, NGOs face similar problems to those faced by the electoral committees. Their election observation must be competent, authoritative and conspicuously autonomous, to promote their own ability to compel allegiance. Problems affecting the NGOs included problems of insecurity, and establishment of relations with more powerful political organisations, including local authorities, political parties, and electoral organisers. In negotiating such relationships, NGOs not only needed to establish sufficient room to fulfil their activities competently, but also to maintain their independence and avoid being tainted with accusations of personal politicisation. They also faced technical problems, such as lack of resources and time for training.

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### **1. Neutrality and Autonomy of NGOs**

NGOs faced few criticisms on the grounds of neutrality, at least before the election. Partly this was because observer NGOs were formed from existing human rights NGOs, which had carefully managed their relationships with both the state and political parties for many years. The use of human rights workers as observers avoided the question of how observers should be appointed. In addition, COMFREL and COFFEL had been founded well in advance of the formation of the NEC, and even before the fighting in Phnom Penh in 1997. Consequently, the circumstances of their birth, which took place independent of the state and in the relatively stable political atmos-

phere of 1995, were less contentious than those of the NEC. Similarly, the third major observer NGO, NICFEC, was formed from the well-established human rights organisation LICADHO.

In the pre-election period, the three major observer NGOs operated free of political constraints, and were able to organise a number of campaign events, including roundtable meetings, public forums and training sessions for voters, which contributed to “the technical and social agenda” of the election.

Concerns were raised about other observer NGOs which were created shortly before the election. Before the election, reports circulated that some NGOs were taking money from Cambodian citizens after promising them jobs as observers. Another observer NGO was said to have recruited its staff from the armed forces. Two NEC members commented on this question:

“We have to improve control of NGOs. There are many allegations that NGOs were fraudulently coerced or used by political parties, were involved in bribery and immoral conduct. There must be a way to control them, they should be independent. They should not establish observers just to validate any party.... The international community gave \$20 million to support the election, so [some NGOs] applied for observer status, because they thought they could get some money. Under the law itself, we have no way but to accept them. There was an inappropriate number of NGOs—some had no intention of appearing. They just coerced people for their own gain.”

“These NGOs should not be created precipitously. For example, some of them were just created when the time to vote arrived, and they had no structure, no time for training. They didn’t understand the rules and duties. NGOs must be created a long time in advance so they can be trained.”

In general, the major NGOs, COMFREL, COFFEL and NICFEC, were excluded from these criticisms. During interviews, representatives from these major NGOs reported involvement in few conflicts prior to polling day, except as mediators.

It is significant that even with these auspicious beginnings, observer NGOs were unable to exert sufficient authority to convince the NUF parties and their supporters of the credibility of the elections following the release of results. During interviews with NGO representatives two major sets of conflicts emerged which involved these groups. First, a number of NGO observers claimed that conflicts had arisen in polling or counting stations, where electoral administrators had either acted to obstruct, or failed to facilitate, NGO observation. Second, and most commonly, NGO representatives referred to conflicting accounts of the vote-counting process released by NGO observers and NUF party observers.

This chapter begins by examining the role of NGOs in the period before the election, when their status was relatively uncontroversial. At this point, NGOs acted as mediators and facilitators. The range of the activities they pursued, and the contribution to the election process that this constituted is examined. Subsequently, the two major types of conflict reported by NGOs during and after polling and counting are analysed.

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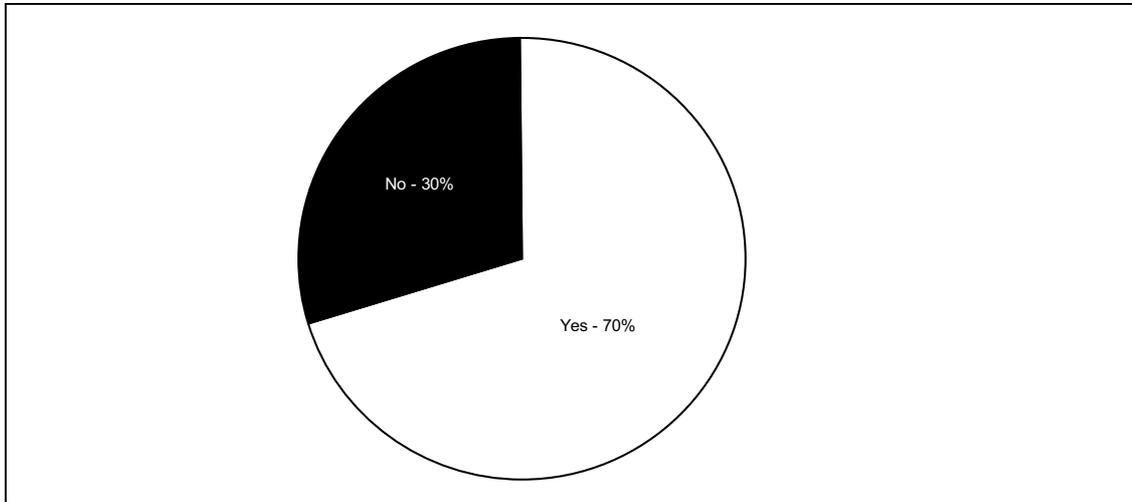
## **2. Conflict Resolution Activities of NGOs**

Aside from observing polling and vote-counting, NGOs contributed to the election in a variety of ways, which were described in Chapter Two.

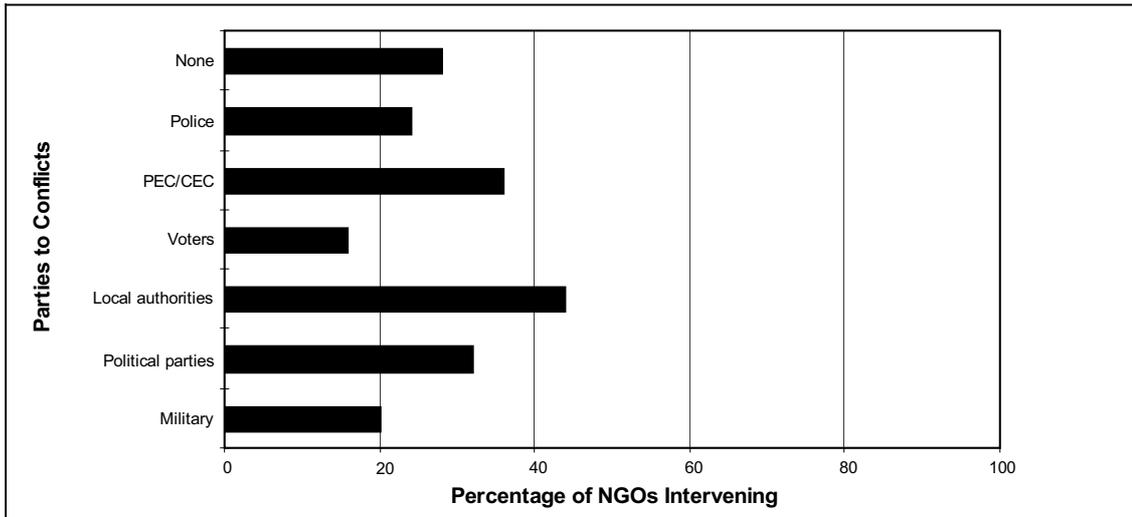
Of particular interest for the purposes of this study is the role played by NGOs in resolving conflicts during the electoral process. According to the code of conduct for observers, observers were entitled to “ask questions of and make comments to registration and electoral officers, but

should not give advice, change any error found or impede the electoral process. But they may report on any and all serious matters as soon as possible, to the electoral authorities present.”<sup>13</sup>

**Figure 6.1. Extent of NGO Intervention in Conflict**

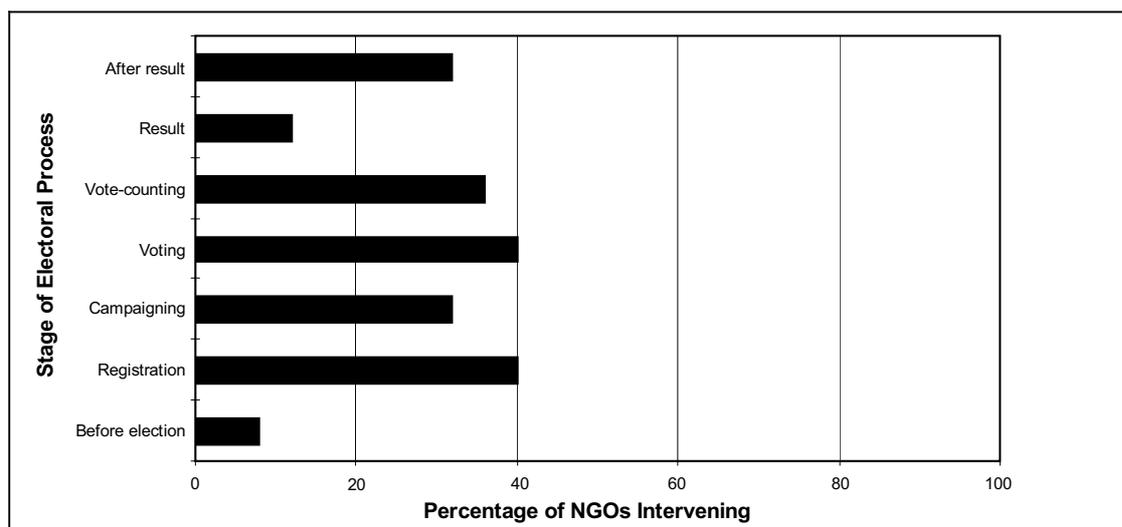


**Figure 6.2. Parties to Conflicts in which NGOs Intervened**



**Figure 6.3. Timing of Conflicts in which NGOs Intervened**

<sup>13</sup> Kingdom of Cambodia, “Code of Conduct for Observers as Determined by the National Election Committee for the 1998 General Election,” Phnom Penh, 1998.



Nevertheless, NGO representatives interviewed for this study reported actions taken by NGOs to intervene in situations of actual and potential conflict from the start of the electoral process. Seventy percent of NGO representatives reported that their NGO had intervened into some conflict which took place during the election. Most commonly, these conflicts involved the local administrative authorities, local electoral committees or political parties. NGOs were most active in this respect during registration, polling and counting (Figures 6.1, 6.2 and 6.3).

The conflict intervention activities described by interviewees from NGOs fell into two major categories. First, there were direct attempts to rectify perceived injustices or violations. NGOs interviewed reported few successes in this area. Second, NGOs engaged in programmes of facilitation, education, circulation of information and conflict prevention.

### 2.1. Direct Attempts to Rectify Perceived Injustices

An early example of NGO intervention over legal provisions which they perceived as unfair was the lobbying of the National Assembly over the Election Law. For example, NGO observer groups strongly criticised perceived political connections among members of the NEC in late 1997 and early 1998. A COMFREL report commented:

“In its early statements in November 1997, COMFREL warned that the neutrality of the NEC would be crucial to the credibility of free and fair elections. The inclusion of government members and persons with known political links would undermine this credibility. However, most members of the NEC were linked to or aligned with the ruling party.”

Further statements criticised the election of the NGO representative to the NEC:

“The selection of this representative was not based on selection criteria capable of ensuring that candidates for the position were neutral and not corrupt. Instead, the appointment was unfair, unjust and not free.”

Furthermore, COMFREL and COFFEL “jointly regretted the failure of the Government to take into account the many opinions calling for a re-examination of the composition of the NEC, in particular to ensure its legality independence, competence and integrity.” COMFREL also criticised a lack of neutrality in the composition of the Constitutional Council, and concluded that it was “unable to state its confidence in the neutrality of [either] body.”<sup>14</sup>

<sup>14</sup> COMFREL, “Statement: Pre-Election Assessment,” Phnom Penh, 24 July 1998, p. 3.

In terms of the NGOs' own stated objectives *vis-à-vis* the election, addressing this question represented an accurate identification of an issue that was likely to be divisive throughout the electoral process. COMFREL failed to evoke any response from the government on this issue. This failure reflects the difficulties faced by NGOs in attempting to reverse government policy, as opposed to influencing it, as well as the firm stand taken by the post-1997 government over its own legitimacy and the legality of its decisions.

Similar failures were experienced at the grassroots level, in cases where individuals were excluded from the electoral process by legal provisions perceived as unfair. For example, one NGO, whose activities are aimed at supporting the rights of ethnic minorities, reported intervention in situations where members of the Khmer Kampuchea Krom ethnic minority were prevented from registering by electoral officials.

The Khmer Kampuchea Krom minority have an uncertain citizenship status in Cambodia. Although they are widely viewed as ethnic Khmer, and, consequently, as having a claim to citizenship, according to the law they still require either appropriate papers or two witnesses to swear that they were born in Cambodia, in order to register as electors. Few are able to fulfil this requirement, and some also fail to fulfil the extra-legal rule of thumb—literacy in Khmer—that is often applied in such cases, as schools in southern Vietnam do not teach Khmer literacy.

The president of this NGO described how families which had been unable to register called on him to request assistance in negotiating with registration officials:

“We found out about the problems because the people telephoned me. We got the information from the Khmer Kampuchea Krom themselves, or their friends come to tell us. We didn't rest during the registration period. More than 100 of them came. They were very poor and didn't want to make a complaint by themselves. We intervened in the cases of 20 families which not able to register. Those families supported the Son Sann Party, and they had problems.”

This problem proved difficult to resolve due to a lack of reference to this minority group in the legal framework of the elections. The NGO director explained:

“We intervened with the PEC and CEC, but it was in the law, so there wasn't much that the police could do. In Vietnam, the Kampuchea Krom have no Khmer schools, so they can't read Khmer. There are five groups helping the Kampuchea Krom, so these civil society groups held discussions to determine the nationality of the Khmer Kampuchea Krom? There is no mention of the Khmer Kampuchea Krom in the Nationality Law or in the Constitution.”

This NGO director declared that this problem in itself was sufficient, in his view, to render the election unfree and unfair.

Other accounts of cases of intervention given by NGO interviewees included the following:

“In Pursat we had cases of the CEC in conflict with voters, and difficulties with the armed forces and local authorities...mostly with the ruling party. For example, the district chief conducted campaigning in the communes. When the election campaign was on, he campaigned for the party. This was one difficult problem.”

“Those armed forces who were members of the CPP threatened opposition parties. For every problem of abuse, we released statements, especially to the *Cambodia Daily* and the newspapers, and the PEC, CEC, and NEC.”

“Just before the violence [between police and demonstrators in September], we went to intervene. First, before the problem arose, we released a statement asking all sides not to use violence, to solve all political problems by peaceful means, and to the opposition parties and H.E. Hok Lundy [the chief of police], H.E. Chea Sophara [then the

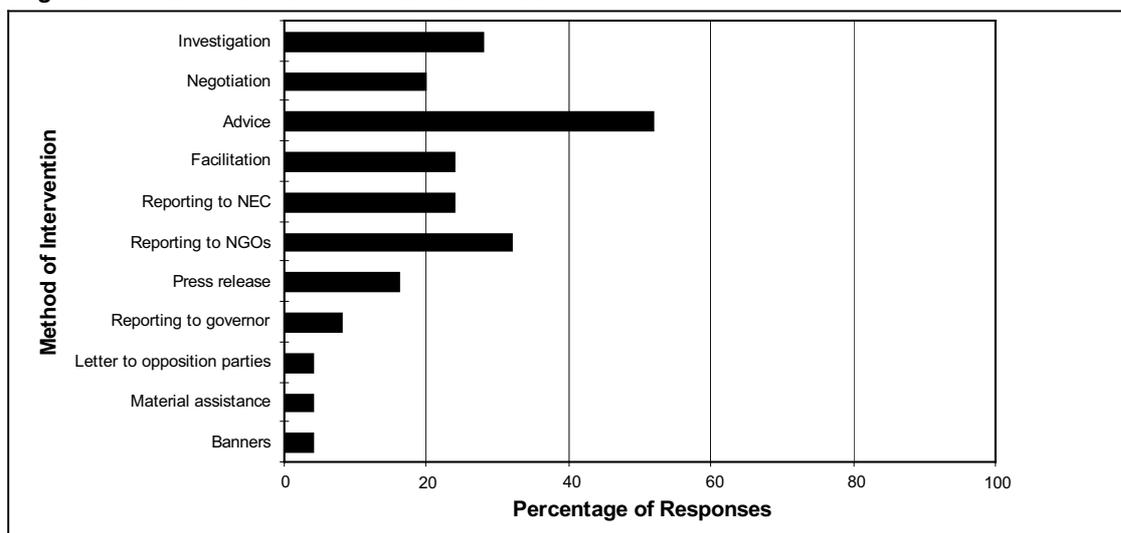
first deputy governor of Phnom Penh] and H.E. Sar Kheng [the minister of interior]— please don't use violence. When the demonstrations happened, we issued a statement to ask them not to use violence.”

In these cases, NGO interviewees were generally pessimistic with regard to their impact. In particular, a number of interviewees raised the question of a lack of response from the NEC to their complaints and reports. The weakness of state agencies charged with security, electoral implementation and law and order combined to close off channels of recourse in such situations.

## 2.2. Informal and Preventive Forms of Intervention

Figure 6.4 overleaf illustrates the types of intervention used by NGOs, and indicates that most were informal. More than half of the NGO representatives interviewed said that their NGOs had been active in giving advice, for example about legal matters, to people or organisations facing an electoral conflict, suggesting that NGOs constituted a significant resource of expertise and knowledge for the often inexperienced election participants. In addition, NGOs organised an ambitious voter education project, which sent NGO workers to almost every part of the country to explain voting procedures and to answer voters' questions, and which organised regular radio broadcasts to inform voters about their rights and responsibilities.

**Figure 6.4. Method of NGO Conflict Intervention**



Also important was the NGO network's function as a national information resource, bearing witness to the election process. Almost one-third of NGO interviewees indicated that they dealt with complaints by passing reports on to other NGOs, in particular the umbrella observation groups COMFREL, COFFEL and NICFEC. More than one-quarter had been involved in investigations of particular cases of conflict, or had sent reports to the NEC over such cases.

Through these functions, the NGO network acted as a conduit, bringing information about law, administration and rights from the centre to the remote areas, and information about concerns, fears and abuses from the remote areas back to the centre. This had the important effect of pluralising sources of information in an environment in which telecommunications infrastructure was poor, rumours were rampant, and political parties were offering highly politicised, and widely divergent, accounts of events.

In terms of conflict prevention, observer NGOs played a similar intermediary role in bringing together members of different political parties and officials, particularly through the "round-table" programme organised by COMFREL. This saw political party representatives meeting with PEC officials in each province to discuss problems or the procedures for the election campaign and

polling day. The high level of distrust between members of opposing parties severely limits cross-party contact in Cambodia. The round-table programme offered a significant opportunity to break down the barriers between the parties and to promote mutual understanding of one another's beliefs and fears.

Although more direct attempts by NGOs to demand electoral accountability, through lobbying, releasing statements and submitting complaints, were largely perceived as unsuccessful, their activities in the fields of education and information are likely to have a cumulative effect, increasing awareness levels of the ordinary citizen, and strengthening the infrastructure for information circulation, which will support future demands for accountability.

The role of NGOs was more limited in the post-election situation. During this time, polarisation was greater and the situation was less structured, offering few opportunities for NGOs to intervene. The major activity reported by NGOs was the release of press statements, video spots on television, and appeals to all the parties to act with restraint and to avoid violence. The ability of NGO leaders to play a leading role in sponsoring negotiations between political leaders was severely constrained. International mediators stepped in as the only agencies powerful enough to bring the parties together in the atmosphere of escalating violence.

One incident, described by an NGO interviewee, illustrates the difficulties facing NGO representatives attempting to intervene in conflict following the election. According to this interviewee, following the start of attempts by police to disperse the demonstrations continuing opposite the National Assembly and outside the Ministry of Information, a group of monks from the Campaign to Reduce Violence attempted to intervene and call for peace. The interviewee said monks went to the Ministry of Information to meet demonstrating students in order "to prevent violence."

According to this source, "the monks didn't know what to do [when they arrived]—they had no plan. So problems arose." Instead of preventing violence, the monks were perceived by members of the security forces to be part of the demonstration, and, it was alleged, were beaten by police. Reports of beatings of monks inflamed the situation even further.

The story reflects the continued weakness of NGOs, both in terms of experience and strategy, and in terms of their ability to demand respect as conflict resolvers from both demonstrators and agents of the state.

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### **3. Conflicts over Polling and Vote-Counting**

Polling day passed generally peacefully. COMFREL, COFFEL and NICFEC reported that their observers had monitored 95 percent of polling stations in 15 provinces. Political party agents were also widely deployed. Accounts given by NGO observers of problems in observing polling generally related to individual incidents, involving particular officials or observers. Complaints more commonly referred to acts of obstruction by individual officials, or disorder in the carrying out of election-related tasks, rendering observation difficult, rather than incidents in which officials were observed to be cheating. This picture reflects the assessment offered by the national spokespersons of the three major observer NGOs shortly after polling and counting were over, that the election was peaceful and credible.

The provisions made by election officials for national observers appear in some cases to have been quite poor. NGO interviewees reported incidents where observers had to press polling and counting station officials to be allowed to exercise their rights as observers. There were occasions where NGO observers were excluded from places where ballots were being stored, and were unable to persuade officials to respond to demands for access.

On polling day itself, four interviewees reported problems for observers trying to get into the polling stations to begin observation. For example:

“Before election day, the NEC, intentionally or unintentionally, wouldn’t give cards to national observers. We made proper lists to give to the NEC, but they didn’t give us enough time. We wanted to send observers down to the small communes, but we had no time to send them there. So COFFEL had problems and couldn’t go to observe. On the day, we tried to go in with our yellow [national observer] cards, but sometimes they wanted our organisation [identity] cards as well, and sometimes our voting cards. So we were late getting into the polling station. That was a problem—they demanded three or four cards instead of just one. It was obstructive.”

“We received information about problems, such as not letting national observers enter the voting station. We contacted the PEC in Kampot, Kompong Thom, Kompong Cham and Kompong Chhnang. In Takeo, I went myself as a representative of COFFEL to talk to the PEC. The authorities didn’t understand well [the role of] civil society.”

Once again, these problems can be interpreted as the kind of flaws that are inevitable in a new process, in which all participants—both state and non-state—lack experience. Incidents of over-zealous, officious or obstructive behaviour may have resulted from this. Yet such incidents were also interpreted by some NGO observer interviewees as evidence of an active concern to prevent NGO observers from playing a role in the process. Opinions differed on whether this perceived concern was motivated by desire to avoid the scrutiny and accountability of civilians, or by an intention to break the electoral rules. Harmony between officials and observers is essential to promoting perceptions of a scrupulously implemented election process, and shortfalls in this area were apparent.

Furthermore, difficulties in this area are doubly significant, as evidence of shortfalls in democratisation in a wider sense. The essential nature of democracy lies not in elections, though elections may act as a means to this end, but in the ability of civilians to challenge officials on an individual level, about the content and appropriateness of their actions. In this sense, the problems faced by NGO observers may be seen as indicative of the continuing immunity of officialdom from civilian scrutiny in day-to-day life in Cambodia.

### *3.1. Relations Between NGO Observers and Political Parties: The Conflict Over Vote-Counting*

For NGOs to impose themselves as arbiters of electoral legitimacy requires political parties to come to respect the observer movement as representative of an over-arching, unified and non-politicised national interest in ensuring that elections are properly implemented. A striking feature of Cambodia politics is the extent to which political parties attempt to present themselves as authoritative embodiments of the national interest, rather than as promoters of particular sets of policies living in pluralist accommodation with promoters of different policies, within the context of a unified civil society.

In 1998, the NGO observer effort failed to achieve this, and consequently, the release of NGO statements which ran contrary to the views of NUF parties led to rifts between them. The disillusion which came to characterise the relationship between NGO observers and the opposition political parties is observable from comments made by two opposition interviewees contacted for this study, one from FUNCINPEC and one from the SRP:

“I’m not happy with the NGOs. They told me that they had enough observers in each polling station but when I went to the station I didn’t see any observers. I noticed that all the observers were accomplices of the CPP. When the people had problems, [the observers] didn’t help them. So I ask the NGOs to cooperate with all the political parties to obtain transparency, not just with one political party.”

“COMFREL and COFFEL didn’t dare to do anything—they were oppressed. They are still scared. If they saw the police and military do something wrong, they were afraid to complain. We complained, but they didn’t listen.”

Different accounts of the integrity of the vote-counting process constituted a major problem for the relationship between political parties and NGO observers. In a post-election statement, COMFREL, COFFEL and NICFEC reported that their observers were present in 95 percent of polling stations in 15 provinces. NUF political party agents were also widely deployed. In the days following the vote counting, the two sets of observers apparently reported markedly different impressions of the process. Some of the problems which arose during vote-counting, and contributed to the escalation of this conflict are summarised in Figure 6.5.

**Figure 6.5. Problems in Monitoring Vote-Counting**

<b>Lack of Information or Difficulties in Collecting and Verifying Information</b>
<p><b>1. At the Counting Station</b></p> <ul style="list-style-type: none"> <li>• Security Concerns includes: (1) isolated incidents of disturbance to counting; and (2) claims that observers were too afraid to ask questions or to make complaints</li> <li>• Lack of Training (Both Officials and Observers) includes: (1) lack of understanding of correct ways of counting; (2) lack of understanding of how to complain; and (3) lack of understanding of roles and duties</li> <li>• Lack of Transparency includes: (1) increase in the number of counting tables; (2) failure to show ballots clearly; (3) failure to facilitate observers at night; (4) some difficulties getting access to counting stations; and (5) some claims of obstruction by officials</li> </ul> <p><b>2. From Phnom Penh</b></p> <ul style="list-style-type: none"> <li>• Decentralisation of the Counting Process (1) large number of counting stations; and (2) remoteness of some counting stations</li> <li>• Tense and Politicised Atmosphere (1) causes strong emotions/suspicious among political parties and observers</li> <li>• Lack of Resources/Time Allocated by the NEC for Recounting and Investigations</li> <li>• Failure to Follow Procedures Correctly includes: (1) mixing together ballots from different communes in different bags; (2) failure to allow observers to observe until all complaints were dealt with; and (3) incorrect completion of forms</li> </ul>

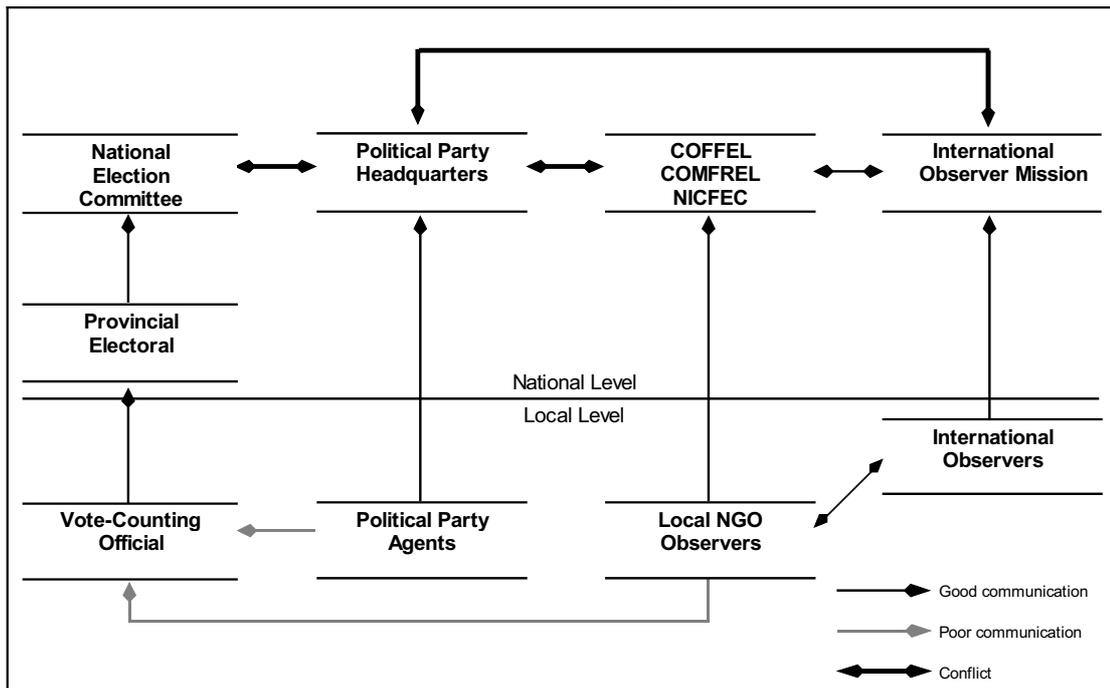
### 3.2. Immediate Causes of Conflict

Three types of immediate cause contributed to this conflict, namely, lack of information, lack of transparency on the part of election officials in dealing with information, and differing interpretations arising from different background beliefs.

Figure 6.6 illustrates schematically the ways in which information circulated at local and national levels. The vote-counting process was highly decentralised, taking place in more than 1,600 commune-level counting stations throughout the country. Present during vote-counting were a variety of actors: election officials from the CECs; NGO election observers; political party agents representing, potentially, all the political parties competing for votes in that commune; and, intermittently, international election observers. Each of these local-level actors represented a larger, hierarchical structure, and held a brief to report back on the local situation to central headquarters in Phnom Penh. Organisation leaders would aggregate this information to formulate and disseminate an overview of the situation nationwide, to act as a check on the NEC. To the extent that consensus was reached, the authority of the electoral process would be enhanced.

Given the lack of communications equipment available to NGO and political party observers within the counting stations, in most rural areas of the country each local counting station must have acted as an isolated entity. Despite the comings and goings of various higher-level officials, international observers, and NGO and party leaders, for much of the day observers and officials found themselves alone together in the counting office.

Aside from rare cases, early reports from most counting stations suggested a peaceful environment throughout the country. Markedly different accounts of the process, however, emerged at the national level, after reports were gathered in from the communes. In particular, the parties in the NUF put forward a version of events which differed significantly from the versions released by national NGO and international observers, and the organising NEC.

**Figure 6.6. Circulation of Information About Vote-Counting**

The major complaints in the statements made by NUF leaders and members at press conferences in the week following the election (and among some observers interviewed for this study) were complaints over transparency and the alleged prevention of NGO and party observers from gathering and verifying information regarding the conduct of the vote-counting process. As counting continued on 27 and 28 July, the NUF parties claimed that problems faced by observers in the counting stations led some NUF party agents to the conclusion that election fraud was taking place. Often, however, this was due to the inability of observers to keep track of the counting processes, rather than due to any overt signs of cheating.

Such complaints indicate that even among the relatively small group of people at the counting station, information did not circulate freely, as indicated in Figure 6.6. For example, observers claimed that ballots were not shown clearly enough so that the observers could check that the number on the ballot paper called out by the counting official was in fact the number ticked; and that counting was conducted at more than one table at once, rendering parallel counting by observers problematic:

“Local authorities wouldn’t let them come to watch. In 1993 they showed the ballots clearly. They had everyone standing in an orderly fashion. But in 1998 they held the ballots so you couldn’t see them.”

“The NEC didn’t tell us in advance about the situation. There were three people in the station and then they divided the counting into ten tables. We said there was no transparency and no neutrality, but the NEC didn’t answer. When they split up the counting it was a big problem.”

The latter problem was the subject of a COMFREL, COFFEL and NICFEC recommendation in January 1999. The three NGOs suggested that the Election Law be amended to ensure that equal numbers of observers and tables were present in each counting station.<sup>15</sup>

<sup>15</sup> COMFREL, COFFEL & NICFEC, “Joint Statement Related to Electoral Law and the National Election Committee,” 27 January 1999, Phnom Penh.

These complaints were similar to those raised by NUF party leaders shortly after the election. NUF party agents, who denounced the counting process at press conferences after the election, also referred to:

- instances where election officials had been seen behaving suspiciously near ballot boxes;
- instances where the number of counting tables had been increased beyond the number of observers; and
- instances where observers had been unable to verify the numbers called out by officials.<sup>16</sup>

The length of time taken for counting was also a problem, particularly when it continued over-night. Two observers interviewed commented:

“After the election when they carried the box to the counting station, they didn’t put it in a safe area. So all the volunteers had to sit and sleep outside the station, and they put the box inside a room and locked the door. But then later, the lock on the door was found to be broken.”

“When we guarded the ballots at night, there were only a few places where we could see them. In some places they locked us out so we couldn’t see them. And then observers were tired [when counting resumed], because they had to stay outside all night. The next day they were exhausted.”

These accounts suggest that counting station officials may have given little thought in advance to the facilitation, as opposed to the toleration, of observers. Observers themselves were also unprepared for the length and intensity of the task. This impeded the ability of observers to remain alert, to collect accurate information, and to be aware at all times of how the ballots were being handled.

Among interviewees, mutual criticisms of conduct centred upon lack of training, experience and preparedness. For example, a FUNCINPEC interviewee commented:

“Political agents were not trained enough. FUNCINPEC always trained its political agents, but the time was very short and they [still] didn’t understand the electoral process clearly. The CECs also didn’t understand about the electoral process...”

An NEC member commented:

“In 1998 the percentage of observers that studied the procedures was very small—only COFFEL and COMFREL—because there was only a short time [available] and they had no experience.”

Similarly, an NGO observer remarked:

“The training of party agents was not properly done. They didn’t understand rejecting ballots. We had less power, they had more power than we did, but they didn’t understand.”

Perceptions by each group of participants of the marked lack of training and experience of other actors appear to have been widespread, and to have affected willingness to accept the validity of the information gathered by these groups.

The effect of poor training of observers must be understood in the context of the relationships between the actors in the counting station. Accounts given by NGO observers interviewed suggest that relations between NGO observers and election administrators in the context of the counting station during the counting process were fairly poor insofar as exchange of information is concerned. Accounts offered by interviewees suggested that communication between observers and

<sup>16</sup> Witnesses, press conference, SRP Headquarters, Phnom Penh, 30 July 1998.

officials was difficult, particularly where problems were perceived by observers. NUF representatives tended to offer a more pessimistic picture, in which political party agents and NGO observers watched, silent and fearful, as officials worked to obfuscate the entire process.

Origins of these issues may be found in a number of circumstantial factors, and they made the relationships between the different groups in the counting stations problematic. The 1998 election was the first organised by Cambodians since before the war. The uniqueness of the situation entailed uncertainty regarding appropriate behaviour and means of implementation. The short time available for training exacerbated this problem. Given long-standing distrust between political parties, and between state and society, it is likely that uncertainty engendered tension in the counting station, in particular between organising officials and opposition and NGO observers. Election observation is a new concept in Cambodia, and the wider principle of immediate accountability of officials to the complaints and interventions of civilians also represents a departure from past practice. The situation was an unfamiliar and a difficult one for these reasons.

Second, though the election process in 1998 was generally peaceful, interviewees held mixed views on the impact of fear in the counting stations. Some NGO observers said that they had been afraid, or that they had believed other observers in the same station were afraid. For example:

“There was a very great effect from [the events of] July 1997. Many political party agents didn’t dare file a complaint because of July, because of 30 March [1997—the grenade attack on a SRP demonstration outside the National Assembly]. And they are political party people, what about normal people? Even me, I was also afraid.”

NUF party interviewees suggested that fear was widespread and oppressive in the counting stations. A FUNCINPEC representative described the situation:

“I went to one place and all the observers were sitting at the other end of the room. I asked the polling station chief why they were over there? He said there was no room for them at the counting table. I asked whether I could call them over to the table. He said yes, but they didn’t move, they didn’t dare to come over.... Because the chief of the counting station had told them not to come. So there was threat and intimidation...”

In this account, the presence of perceived fear is explicitly connected with difficulties in collecting information, or in demanding the right to collect information.

Third, wider relationships dictated mutual expectations of standards of behaviour, which in turn affected interpretations of what was observed. Distrust characterised the relationship between the NUF parties and electoral organising agencies. Throughout the 1998 election process, the NUF parties repeatedly called for a review of the composition of the NEC, PECs and CECs, claiming that the membership of these committees were biased towards the CPP. This conflict was not successfully mediated before the election, and created an expectation among the NUF parties that foul play was likely. Such expectations may have heightened the tension in vote-counting stations, and may have altered the interpretations placed by NUF party observers upon the events they witnessed.

The different interpretations made by NUF parties, NGO observers, and international observers of what they saw in the counting stations mirror, to an extent, their different attitudes to the electoral committees. While both the NUF and COMFREL criticised the election committees from an early stage, and repeatedly called for adjustments to staffing, the NGOs adopted a more gradualist, reformist approach. The NUF called for root-and-branch changes, and operated on the assumption that the integrity of the elections would be violated by the electoral committees as constituted in early 1998. The NGOs, by contrast, took a pragmatic approach to problems of perceived bias in the electoral committees, mediating between NUF parties and local electoral committees in areas where specific problems arose. This approach suggested a belief that if procedures were properly followed, there was still an opportunity for a free and fair election. This

willingness to suspend judgement may have contributed to different perceptions of official behaviour inside counting stations.

From the accounts of interviewees, it appears that objections were infrequently raised or resolved in the immediate environment of the counting station. For example, in each counting station, observers were asked to sign a statement to certify that the counting process had been performed properly. In many cases, it appears that political party observers signed these statements even though they planned later to complain to their head offices about problems they had observed. This contributed to escalating conflict later, as the failure to speak out at the local level undermined the legitimacy of complaints in the view of electoral organisers, and some NGO observers, who argued that genuine protests would and should have been raised immediately at the counting station.

According to an NEC member interviewed for this study:

“[Party] agents signed the statements in the polling and counting stations, but the parties still complained. Some parties, two days after the election or after the counting, they began to complain. We didn’t know how to solve this problem, because the parties didn’t understand their duties. For example, if they knew members of the local authorities were there in the voting station, don’t wait until several days afterwards to complain.”

Similarly, a member of an observer NGO asked:

“We ask why was it that the party observers signed every form? Why did they stay quiet? If they hadn’t signed, we wouldn’t have released the result. But if you sign that you agree, then we release it. Our result was no different from the NEC score.”

Members of NUF parties contested this explanation, some suggesting that party agents had not signed statements except when compelled or tricked into doing so. A member of an opposition party suggested:

“Some representatives did not sign, but the authorities signed themselves. Also they forced people to sign. Intimidated or bribed them, or cheated them out of their signature by saying that the paper was something else.”

An NGO observer commented, by contrast, that the NUF parties did not raise questions at the counting station, even though they were entitled to do so, because party agents were unaware of the procedures for this:

“The political party agents didn’t understand. This was a problem of the NEC and a problem of the political parties, because the political parties didn’t train their agents properly. The CPP knew because they trained their observers properly. FUNCINPEC and the Sam Rainsy Party didn’t train them, and they didn’t know how to complain.”

Another NGO observer remarked that while there was a pre-prepared statement available for observers to sign to certify the process, there was no form available for them to register any concerns. This imposed a psychological barrier against making complaints on the spot, and increased the difficulty of verifying complaints later.

Furthermore, a number of NGO observers either agreed that fear was a factor at this point, or that they believed fear was a factor for the political party agents:

“Many political parties wanted to file complaints, but local agents didn’t want to file the complaint by themselves because they lived in that area and they were concerned about their safety.”

Because of these problems, interviewees suggested, many political party agents did not raise their objections immediately, but instead travelled to Phnom Penh to submit their complaints to their party headquarters.

National-level conflict arose as different accounts of the process reached Phnom Penh. NEC and CPP local representatives reported few problems during vote-counting. NUF party observers reported serious irregularities and abuses, significant enough to undermine the integrity of the process. NGO and international observers reported some irregularities in parts of the country, but viewed these as insufficient evidence of a systematic pattern of electoral fraud. These trends in interpretation remained consistent during interviews carried out for this study.

A major problem in resolving this conflict was the fact that the difference on which the conflict hinged was a difference of subjective impression of the intentions and activities of electoral officials. Little tangible or direct eyewitness evidence was available, aside from observer testimony as to their beliefs at the time, which may have been tainted by political motivation, fear, or lack of experience of electoral situations.

Mutual criticism between NGO observers, international observers, and NUF party observers of one another's performance heightened the crisis, by casting doubt on the quality and validity of different types of information coming from the counting stations. Equally, the assertion that different levels of fear were experienced by different individuals and organisations made it difficult to compare accounts of the process. The varying levels of training and confidence possessed by observers in different parts of the country were impossible to assess from the standpoint of Phnom Penh. The emergence of doubt undercut the authority of all information simultaneously.

It is also significant to note that lack of information about vote-counting and re-counting led swiftly to the circulation of rumours. In particular, the delays in the release of voting figures by the NEC led to widespread speculation over the results. Some newspapers published predictions, which led to speculation that some parties or organisations had inside information. Rumours of arguments within the NEC were also common at this time, and were used to explain the delays in the NEC's release of results. These rumours tended to increase the polarisation and emotion felt by different sides over the issue of vote-counting. Throughout the election process, the emergence of rumours in response to a lack of information, contributed to the escalation of conflict.

Transfer of conflict to the national political arena caused other problems. The major dispute was between the CPP and NEC on the one hand, accused of conspiring to commit fraud, and the NUF parties on the other, who saw themselves as the victims of this conspiracy. Both the environment in Phnom Penh and the time lag and distance between the occurrence of problems in the commune and the registering of complaints in the capital prolonged and politicised the conflict.

A major feature of the Phnom Penh environment was the greater organisational strength of the NUF parties *vis-à-vis* their CPP rivals than in the countryside. The NUF parties were in a stronger position to pursue their demands in Phnom Penh, despite their apparent electoral defeat.

Yet the balance between the parties was also characterised by intense polarisation and political machination. Early results, which indicated that the CPP would need to seek coalition partners in order to form a government, created a potential bargaining chip for defeated opposition leaders. It is unclear whether the NUF parties viewed allegations of fraud as a bargaining chip for gaining favourable coalition terms, or the withholding of coalition support as a bargaining chip for urging resolution of election complaints. The possibility of the former was sufficient to raise suspicions of ulterior motives behind the allegations of fraud.

Wider factors contributed to the escalation of these conflicts into an emotional appeal. The majority of Phnom Penh citizens had voted for the NUF parties, and were disappointed by the election results. Many were inclined to interpret the appearance of provincial observers with complaints as evidence that their own voting preferences were mirrored by their compatriots in the countryside. Also, the concentration in Phnom Penh during the election period of international organisations, perceived as being capable of de-legitimising the electoral process through a withdrawal of recognition, encouraged swift attempts by the NUF to maintain international engagement by quickly raising vociferous complaints. For these reasons, conflicts over irregularities escalated in intensity when aggregated at the national level.

This escalating conflict proved difficult to resolve, in part because of an unwillingness, on the part of the NEC and the CPP, to recognise the legitimacy of these complaints, and in part because of the institutional weaknesses in state procedures for resolving the conflict already described.

In this context, observer NGOs had little opportunity to make their authority felt. The rapid polarisation of the environment following the elections, which also contributed to the weakening of NEC authority, left them little role to play. The NGOs were ill-equipped to respond to the accusations and counter-accusations of the political parties, and the speed with which they mobilised their members into action. As demonstrations became focused on wider issues, of Khmer nationalism and alleged responsibility for a broad range of incidents in the past, the NGOs pragmatic, fact-based approach was overtaken.

Focus on the reactions and statements of international observers and foreign governments was particularly intense, and the ability of NGOs to attract attention suffered as a consequence. The link between international perceptions of the election and disbursements of aid implied that international judgements were more authoritative than local judgements. The disunity of foreign governments, in particular once individual members of the US Senate began to dissent from the statements made by international observer teams in Cambodia, undermined the ability of the Cambodian NGOs to present an authoritative view that could discipline the NUF parties into acceptance of the outcome.

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#### **4. Conclusion**

Like the NEC and Constitutional Council, NGO observer groups found themselves unable to fulfil the political task of pronouncing authoritatively on the election and of promoting allegiance to the results. In part this was due to technical and information-related problems in observation; in part, it reflected wider conflictual aspects of the environment, particularly after the election.

Observer NGOs groups were highly conscious of the need to pursue this political task further. Employment of strategies to strengthen their credibility with all political parties and state agencies between now and the next election offer an opportunity for observer NGOs to build on their experience of 1998, and increasingly to embed themselves firmly as a central component of electoral hegemony in the future.

Eight

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## Conclusion

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The conflicts presented in the preceding chapters have been analysed on three levels, the level of immediate cause, the level of institutional structure and the level of political community. The experience of conflict surrounding the 1998 election suggests that at all these levels problems or weaknesses can be identified which render the smooth functioning of elections in resolving political conflict difficult.

Furthermore, examination of these conflicts suggests that problems on these three levels are linked, and affect one another in such a way as to promote weakness. For example, lack of a sense of political community between the major political parties contributes to institutional weakness. Parties view appointments to public office with suspicion, and seek to undermine public officials who are viewed as sympathetic to political opponents. Both administrative staff responsible for organising the election and NGO observers described the difficulties and risks to reputation and personal safety inherent in attempting to mediate conflict in atmospheres of high political tension.

In turn, institutional weakness contributes to the perpetuation of divisions in the political community. For example, the failure to address concerns about the neutrality of the electoral committees, the Constitutional Council, the security forces and local authorities in a satisfactory way entailed that suspicions still lingered among interviewees representing the NUF, months after the election was over and the question of governance had been resolved. A vicious circle traps fledgling state agencies between powerful and antagonistic political parties. The mutual distrust of the parties leads them to perpetuate the emasculation of agencies perceived as potential threats to their own interests. In this context, mundane problems of information, priority, or definition assume the proportions of national crises, as described in the present study.

In developing an approach to conflict resolution applicable to electoral conflicts, this political context is an important factor. The inexperience of election organisers in an atmosphere of extreme distrust allows almost any problem to escalate beyond the reach of domestic mediators. Consequently, emphasis on technical solutions is unlikely to be effective. Although the technical achievements of election organisers in 1998 were impressive, perfection cannot be attained. Over-regulation of technical matters is likely to cause more mistakes, and more sources of conflict, if technical remedies are pursued in isolation without reference to the wider political context.

Improvements to technical infrastructure, such as means of communication, procedures for appointments, circulation of information, and, in particular, the development of procedures for ensuring transparency and for re-checking disputed elements of the process, are more pertinent. This is partly because such improvements have a political, as well as a technical impact.

Both the authorisation of facts and the convergence of interpretation and prioritisation can be promoted simply through the strengthening of technical means of communication and information circulation, particularly if all parties engage in the same infrastructure on the same terms. The beginnings of public debate were noted in the round-table broadcasts and NGO-organised public

forums in 1998, and further steps in this direction contribute to narrowing the divisions between political parties.

Yet in the final analysis, the conflicts which surrounded the 1998 election were political conflicts, which require political solutions. As described in Chapter Seven, international organisations were responsible for supplying much of the overtly political framework for the 1998 election. There was also a large amount of international mediation when the various electoral conflicts reached their climax in early September 1998. Building domestic political structures capable of handling such conflicts requires tackling a number of pressing political questions.

Fear and insecurity were important factors in many of the conflicts outlined in the present study. In part this is a result of Cambodia's turbulent history. In part it is the result of other causes, such as: ongoing violent practices, on the part of various agencies of state as well as non-state actors; institutional weaknesses in the security and legal systems; and alarmist rhetoric on the part of political parties and their supporters.

An easing of the climate of fear which existed in Cambodia in early 1998 is necessary before steps can be made towards the establishment of the "consensus on the fundamentals" necessary to make conflict "less than conflict." Consensus is at present precluded by the distance between the political parties; their lack of communication; their belief that their opponents are prepared to use any means to defeat them; their willingness to manipulate agencies of state for the purposes of political competition; and belief that their opponents are doing exactly the same. Establishment of a basic level of security can begin to overcome the distrust that paralyses progress on questions of depoliticisation.

A further important factor noted in a number of conflicts was the tendency on the part of political parties to view international support as the final arbiter of disputes. This tendency focused the attention of political parties away from the search for a political solution to electoral problems that would bind all Cambodians to a process which served their common interest in reconciliation and peace. Rather, it encouraged exaggeration of concerns and the entrenchment of positions, particularly over issues where international intervenors themselves appeared divided. Orientation towards foreign adjudication can promote division, by obviating the need to search for a self-policing, self-sustaining compromise between the local parties.

Recognition of the problems caused by the deeply divided nature of the Cambodian political community dictates the need for preventive action. Some steps were made in this direction in 1998, for example in efforts to minimise the role of the security forces in the election. In other areas, such as the handling of cases where potential conflicts of interest were raised with regard to particular election staff, procedures were not in place to overcome these problems and promote confidence on the part of the complainants.

These points suggest three central recommendations for Cambodian electoral organisers and electoral participants:

- Action to reduce the general climate of insecurity in Cambodia, by improving the legal and security systems and by tackling the question of social and political violence generally;
- Recognition of the interdependence of the Cambodian political parties, and greater focus on mutual interests, mutually beneficial solutions, and jointly implemented safeguards for handling conflict. This entails reduced emphasis on attracting international backing in order to prevail; and
- Recognition that the deep distrust in the Cambodian political community means that perceived or potential conflicts of interest are a legitimate concern, on the part of NGOs, governing and opposition parties, or the public at large. The political task of electoral organisers lies in active efforts to overcome these problems by establishing their authority and impartiality in the eyes of all parties.

The difficulties inherent in these tasks is clear. In particular, an essential component missing from Cambodian elections is custom. Tradition defines freedom and fairness to a great degree, and expectations of “free and fair elections” are consequently self-fulfilling to a great extent. Many of the complaints related to polling and counting in the 1998 elections were essentially suspicions. A search for strategies to reduce suspicion and to enhance confidence of all parties in agencies of state is needed. Paradoxically, the task of depoliticisation of the state is a political task, requiring the subordination of immediate party interests to the long-term interests of depoliticisation.

If such strategies are successful, a start can be made on the task of rebuilding trust between Cambodian political parties. A greater measure of trust would diminish the number of complaints made and permit a measured exploration of those remaining. Establishing trust requires positive efforts by electoral participants, not only to fulfil their obligations as they perceive them, but to meet the concerns of opponents, and to promote convergence of perceptions. Recognition of this as a political task facing all electoral participants, including election organisers and observers as well as political parties, is a prerequisite. Continued pursuit of this task is necessary over a considerable period of time, before adjusted expectations contribute to the building of both institutions and community.

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## **National Observer NGOs**

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The variety of tasks undertaken by national observer NGOs has already been described in Chapter Two. Their function was characterised by an interviewee from COMFREL as follows:

“We must strengthen COMFREL to become a real arbitrator. We must have moral authority enough that we can stabilise the situation and solve conflicts. We need to strengthen our credibility more. We must not let the players destabilise the situation. It is a tradition in Cambodia that the loser always makes trouble. That is the reason why we need to strengthen the credibility of local observers. When the local observer says free and fair, everyone must accept that.”

Another NGO interviewee commented on the role of national observers:

“The point of NGOs is to make the commune election law more technical than political, to move away from the political agenda to a technical and social agenda.”

The latter comment indicates the role that observer NGOs have to play in supporting the NEC. By boosting the authority of election results, and promoting allegiance to the elections, the NGOs can help to promote an electoral hegemony, which can remove the kinds of political problems that dogged the NEC in 1998. This leaves the NEC free to focus on technical aspects of the election, while the attention of the political parties is centred on their agendas for social reform.

In achieving this objective, NGOs face similar problems to those faced by the electoral committees. Their election observation must be competent, authoritative and conspicuously autonomous, to promote their own ability to compel allegiance. Problems affecting the NGOs included problems of insecurity, and establishment of relations with more powerful political organisations, including local authorities, political parties, and electoral organisers. In negotiating such relationships, NGOs not only needed to establish sufficient room to fulfil their activities competently, but also to maintain their independence and avoid being tainted with accusations of personal politicisation. They also faced technical problems, such as lack of resources and time for training.

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### **1. Neutrality and Autonomy of GOs**

NGOs faced few criticisms on the grounds of neutrality, at least before the election. Partly this was because observer NGOs were formed from existing human rights NGOs, which had carefully managed their relationships with both the state and political parties for many years. The use of human rights workers as observers avoided the question of how observers should be appointed. In addition, COMFREL and COFFEL had been founded well in advance of the formation of the NEC, and even before the fighting in Phnom Penh in 1997. Consequently, the circumstances of their birth, which took place independent of the state and in the relatively stable political atmosphere of 1995, were less contentious than those of the NEC. Similarly, the third major observer NGO, NICFEC, was formed from the well-established human rights organisation LICADHO.

In the pre-election period, the three major observer NGOs operated free of political constraints, and were able to organise a number of campaign events, including roundtable meetings, public forums and training sessions for voters, which contributed to “the technical and social agenda” of the election.

Concerns were raised about other observer NGOs which were created shortly before the election. Before the election, reports circulated that some NGOs were taking money from Cambodian citizens after promising them jobs as observers. Another observer NGO was said to have recruited its staff from the armed forces. Two NEC members commented on this question:

“We have to improve control of NGOs. There are many allegations that NGOs were fraudulently coerced or used by political parties, were involved in bribery and immoral conduct. There must be a way to control them, they should be independent. They should not establish observers just to validate any party.... The international community gave \$20 million to support the election, so [some NGOs] applied for observer status, because they thought they could get some money. Under the law itself, we have no way but to accept them. There was an inappropriate number of NGOs—some had no intention of appearing. They just coerced people for their own gain.”

“These NGOs should not be created precipitously. For example, some of them were just created when the time to vote arrived, and they had no structure, no time for training. They didn’t understand the rules and duties. NGOs must be created a long time in advance so they can be trained.”

In general, the major NGOs, COMFREL, COFFEL and NICFEC, were excluded from these criticisms. During interviews, representatives from these major NGOs reported involvement in few conflicts prior to polling day, except as mediators.

It is significant that even with these auspicious beginnings, observer NGOs were unable to exert sufficient authority to convince the NUF parties and their supporters of the credibility of the elections following the release of results. During interviews with NGO representatives two major sets of conflicts emerged which involved these groups. First, a number of NGO observers claimed that conflicts had arisen in polling or counting stations, where electoral administrators had either acted to obstruct, or failed to facilitate, NGO observation. Second, and most commonly, NGO representatives referred to conflicting accounts of the vote-counting process released by NGO observers and NUF party observers.

This chapter begins by examining the role of NGOs in the period before the election, when their status was relatively uncontroversial. At this point, NGOs acted as mediators and facilitators. The range of the activities they pursued, and the contribution to the election process that this constituted is examined. Subsequently, the two major types of conflict reported by NGOs during and after polling and counting are analysed.

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## **2. Conflict Resolution Activities of NGOs**

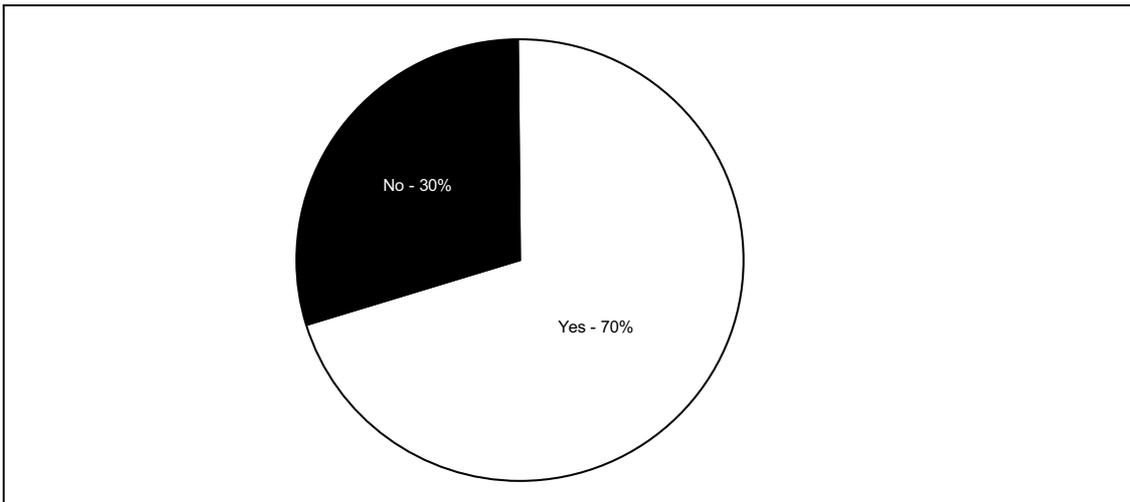
Aside from observing polling and vote-counting, NGOs contributed to the election in a variety of ways, which were described in Chapter Two.

Of particular interest for the purposes of this study is the role played by NGOs in resolving conflicts during the electoral process. According to the code of conduct for observers, observers were entitled to “ask questions of and make comments to registration and electoral officers, but should not give advice, change any error found or impede the electoral process. But they may report on any and all serious matters as soon as possible, to the electoral authorities present.”<sup>1</sup>

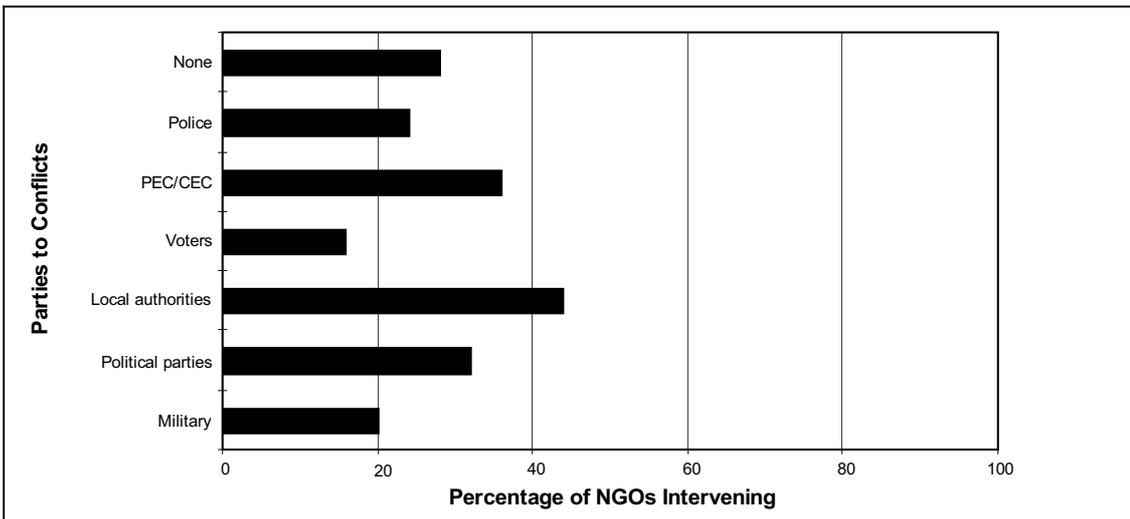
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<sup>1</sup> Kingdom of Cambodia, “Code of Conduct for Observers as Determined by the National Election Committee for the 1998 General Election,” Phnom Penh, 1998.

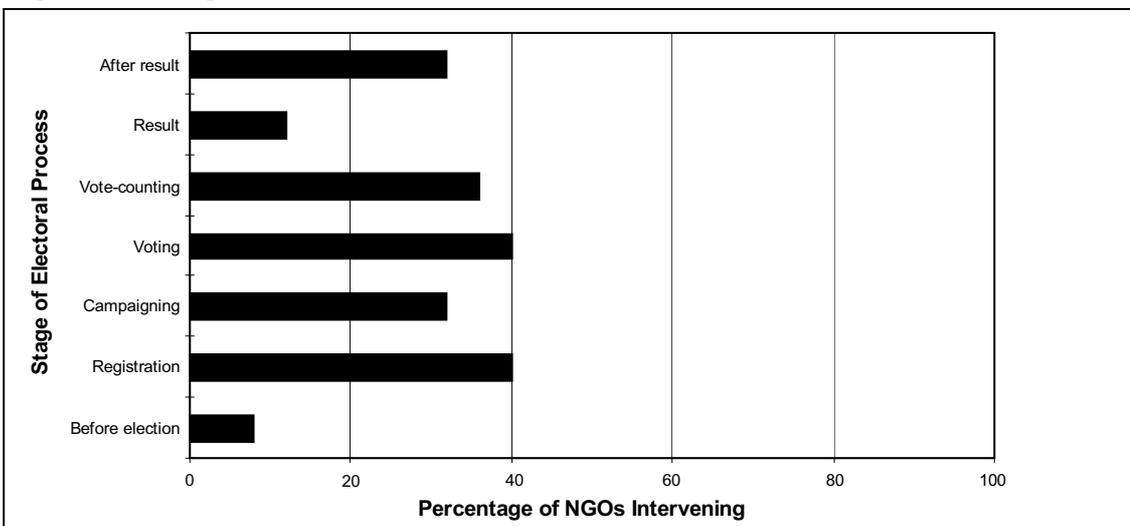
**Figure 6.1. Extent of NGO Intervention in Conflict**



**Figure 6.2. Parties to Conflicts in which NGOs Intervened**



**Figure 6.3. Timing of Conflicts in which NGOs Intervened**



Nevertheless, NGO representatives interviewed for this study reported actions taken by NGOs to intervene in situations of actual and potential conflict from the start of the electoral process. Seventy percent of NGO representatives reported that their NGO had intervened into some conflict which took place during the election. Most commonly, these conflicts involved the local administrative authorities, local electoral committees or political parties. NGOs were most active in this respect during registration, polling and counting (Figures 6.1, 6.2 and 6.3).

The conflict intervention activities described by interviewees from NGOs fell into two major categories. First, there were direct attempts to rectify perceived injustices or violations. NGOs interviewed reported few successes in this area. Second, NGOs engaged in programmes of facilitation, education, circulation of information and conflict prevention.

### 2.1. Direct Attempts to Rectify Perceived Injustices

An early example of NGO intervention over legal provisions which they perceived as unfair was the lobbying of the National Assembly over the Election Law. For example, NGO observer groups strongly criticised perceived political connections among members of the NEC in late 1997 and early 1998. A COMFREL report commented:

“In its early statements in November 1997, COMFREL warned that the neutrality of the NEC would be crucial to the credibility of free and fair elections. The inclusion of government members and persons with known political links would undermine this credibility. However, most members of the NEC were linked to or aligned with the ruling party.”

Further statements criticised the election of the NGO representative to the NEC:

“The selection of this representative was not based on selection criteria capable of ensuring that candidates for the position were neutral and not corrupt. Instead, the appointment was unfair, unjust and not free.”

Furthermore, COMFREL and COFFEL “jointly regretted the failure of the Government to take into account the many opinions calling for a re-examination of the composition of the NEC, in particular to ensure its legality independence, competence and integrity.” COMFREL also criticised a lack of neutrality in the composition of the Constitutional Council, and concluded that it was “unable to state its confidence in the neutrality of [either] body.”<sup>2</sup>

In terms of the NGOs’ own stated objectives *vis-à-vis* the election, addressing this question represented an accurate identification of an issue that was likely to be divisive throughout the electoral process. COMFREL failed to evoke any response from the government on this issue. This failure reflects the difficulties faced by NGOs in attempting to reverse government policy, as opposed to influencing it, as well as the firm stand taken by the post-1997 government over its own legitimacy and the legality of its decisions.

Similar failures were experienced at the grassroots level, in cases where individuals were excluded from the electoral process by legal provisions perceived as unfair. For example, one NGO, whose activities are aimed at supporting the rights of ethnic minorities, reported intervention in situations where members of the Khmer Kampuchea Krom ethnic minority were prevented from registering by electoral officials.

The Khmer Kampuchea Krom minority have an uncertain citizenship status in Cambodia. Although they are widely viewed as ethnic Khmer, and, consequently, as having a claim to citizenship, according to the law they still require either appropriate papers or two witnesses to swear that they were born in Cambodia, in order to register as electors. Few are able to fulfil this re-

<sup>2</sup> COMFREL, “Statement: Pre-Election Assessment,” Phnom Penh, 24 July 1998, p. 3.

quirement, and some also fail to fulfil the extra-legal rule of thumb—literacy in Khmer—that is often applied in such cases, as schools in southern Vietnam do not teach Khmer literacy.

The president of this NGO described how families which had been unable to register called on him to request assistance in negotiating with registration officials:

“We found out about the problems because the people telephoned me. We got the information from the Khmer Kampuchea Krom themselves, or their friends come to tell us. We didn’t rest during the registration period. More than 100 of them came. They were very poor and didn’t want to make a complaint by themselves. We intervened in the cases of 20 families which not able to register. Those families supported the Son Sann Party, and they had problems.”

This problem proved difficult to resolve due to a lack of reference to this minority group in the legal framework of the elections. The NGO director explained:

“We intervened with the PEC and CEC, but it was in the law, so there wasn’t much that the police could do. In Vietnam, the Kampuchea Krom have no Khmer schools, so they can’t read Khmer. There are five groups helping the Kampuchea Krom, so these civil society groups held discussions to determine the nationality of the Khmer Kampuchea Krom? There is no mention of the Khmer Kampuchea Krom in the Nationality Law or in the Constitution.”

This NGO director declared that this problem in itself was sufficient, in his view, to render the election unfree and unfair.

Other accounts of cases of intervention given by NGO interviewees included the following:

“In Pursat we had cases of the CEC in conflict with voters, and difficulties with the armed forces and local authorities...mostly with the ruling party. For example, the district chief conducted campaigning in the communes. When the election campaign was on, he campaigned for the party. This was one difficult problem.”

“Those armed forces who were members of the CPP threatened opposition parties. For every problem of abuse, we released statements, especially to the *Cambodia Daily* and the newspapers, and the PEC, CEC, and NEC.”

“Just before the violence [between police and demonstrators in September], we went to intervene. First, before the problem arose, we released a statement asking all sides not to use violence, to solve all political problems by peaceful means, and to the opposition parties and H.E. Hok Lundy [the chief of police], H.E. Chea Sophara [then the first deputy governor of Phnom Penh] and H.E. Sar Kheng [the minister of interior]—please don’t use violence. When the demonstrations happened, we issued a statement to ask them not to use violence.”

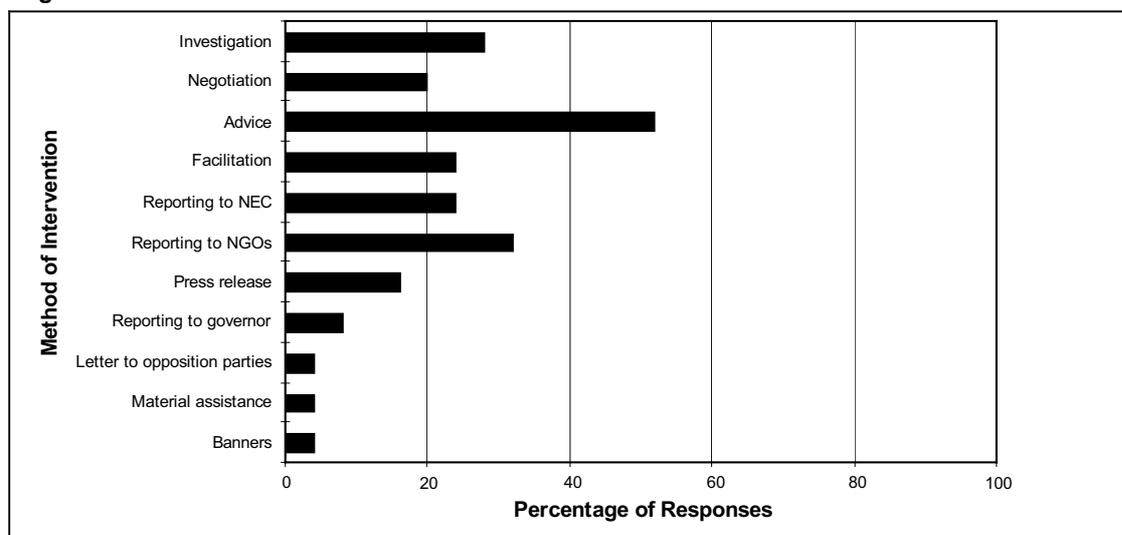
In these cases, NGO interviewees were generally pessimistic with regard to their impact. In particular, a number of interviewees raised the question of a lack of response from the NEC to their complaints and reports. The weakness of state agencies charged with security, electoral implementation and law and order combined to close off channels of recourse in such situations.

## 2.2. Informal and Preventive Forms of Intervention

Figure 6.4 overleaf illustrates the types of intervention used by NGOs, and indicates that most were informal. More than half of the NGO representatives interviewed said that their NGOs had been active in giving advice, for example about legal matters, to people or organisations facing an electoral conflict, suggesting that NGOs constituted a significant resource of expertise and knowledge for the often inexperienced election participants. In addition, NGOs organised an ambitious voter education project, which sent NGO workers to almost every part of the country to explain

voting procedures and to answer voters' questions, and which organised regular radio broadcasts to inform voters about their rights and responsibilities.

**Figure 6.4. Method of NGO Conflict Intervention**



Also important was the NGO network's function as a national information resource, bearing witness to the election process. Almost one-third of NGO interviewees indicated that they dealt with complaints by passing reports on to other NGOs, in particular the umbrella observation groups COMFREL, COFFEL and NICFEC. More than one-quarter had been involved in investigations of particular cases of conflict, or had sent reports to the NEC over such cases.

Through these functions, the NGO network acted as a conduit, bringing information about law, administration and rights from the centre to the remote areas, and information about concerns, fears and abuses from the remote areas back to the centre. This had the important effect of pluralising sources of information in an environment in which telecommunications infrastructure was poor, rumours were rampant, and political parties were offering highly politicised, and widely divergent, accounts of events.

In terms of conflict prevention, observer NGOs played a similar intermediary role in bringing together members of different political parties and officials, particularly through the "round-table" programme organised by COMFREL. This saw political party representatives meeting with PEC officials in each province to discuss problems or the procedures for the election campaign and polling day. The high level of distrust between members of opposing parties severely limits cross-party contact in Cambodia. The round-table programme offered a significant opportunity to break down the barriers between the parties and to promote mutual understanding of one another's beliefs and fears.

Although more direct attempts by NGOs to demand electoral accountability, through lobbying, releasing statements and submitting complaints, were largely perceived as unsuccessful, their activities in the fields of education and information are likely to have a cumulative effect, increasing awareness levels of the ordinary citizen, and strengthening the infrastructure for information circulation, which will support future demands for accountability.

The role of NGOs was more limited in the post-election situation. During this time, polarisation was greater and the situation was less structured, offering few opportunities for NGOs to intervene. The major activity reported by NGOs was the release of press statements, video spots on television, and appeals to all the parties to act with restraint and to avoid violence. The ability of NGO leaders to play a leading role in sponsoring negotiations between political leaders was

severely constrained. International mediators stepped in as the only agencies powerful enough to bring the parties together in the atmosphere of escalating violence.

One incident, described by an NGO interviewee, illustrates the difficulties facing NGO representatives attempting to intervene in conflict following the election. According to this interviewee, following the start of attempts by police to disperse the demonstrations continuing opposite the National Assembly and outside the Ministry of Information, a group of monks from the Campaign to Reduce Violence attempted to intervene and call for peace. The interviewee said monks went to the Ministry of Information to meet demonstrating students in order “to prevent violence.”

According to this source, “the monks didn’t know what to do [when they arrived]—they had no plan. So problems arose.” Instead of preventing violence, the monks were perceived by members of the security forces to be part of the demonstration, and, it was alleged, were beaten by police. Reports of beatings of monks inflamed the situation even further.

The story reflects the continued weakness of NGOs, both in terms of experience and strategy, and in terms of their ability to demand respect as conflict resolvers from both demonstrators and agents of the state.

### **3. Conflicts over Polling and Vote-Counting**

Polling day passed generally peacefully. COMFREL, COFFEL and NICFEC reported that their observers had monitored 95 percent of polling stations in 15 provinces. Political party agents were also widely deployed. Accounts given by NGO observers of problems in observing polling generally related to individual incidents, involving particular officials or observers. Complaints more commonly referred to acts of obstruction by individual officials, or disorder in the carrying out of election-related tasks, rendering observation difficult, rather than incidents in which officials were observed to be cheating. This picture reflects the assessment offered by the national spokespersons of the three major observer NGOs shortly after polling and counting were over, that the election was peaceful and credible.

The provisions made by election officials for national observers appear in some cases to have been quite poor. NGO interviewees reported incidents where observers had to press polling and counting station officials to be allowed to exercise their rights as observers. There were occasions where NGO observers were excluded from places where ballots were being stored, and were unable to persuade officials to respond to demands for access.

On polling day itself, four interviewees reported problems for observers trying to get into the polling stations to begin observation. For example:

“Before election day, the NEC, intentionally or unintentionally, wouldn’t give cards to national observers. We made proper lists to give to the NEC, but they didn’t give us enough time. We wanted to send observers down to the small communes, but we had no time to send them there. So COFFEL had problems and couldn’t go to observe. On the day, we tried to go in with our yellow [national observer] cards, but sometimes they wanted our organisation [identity] cards as well, and sometimes our voting cards. So we were late getting into the polling station. That was a problem—they demanded three or four cards instead of just one. It was obstructive.”

“We received information about problems, such as not letting national observers enter the voting station. We contacted the PEC in Kampot, Kompong Thom, Kompong Cham and Kompong Chhnang. In Takeo, I went myself as a representative of COFFEL to talk to the PEC. The authorities didn’t understand well [the role of] civil society.”

Once again, these problems can be interpreted as the kind of flaws that are inevitable in a new process, in which all participants—both state and non-state—lack experience. Incidents of over-

zealous, officious or obstructive behaviour may have resulted from this. Yet such incidents were also interpreted by some NGO observer interviewees as evidence of an active concern to prevent NGO observers from playing a role in the process. Opinions differed on whether this perceived concern was motivated by desire to avoid the scrutiny and accountability of civilians, or by an intention to break the electoral rules. Harmony between officials and observers is essential to promoting perceptions of a scrupulously implemented election process, and shortfalls in this area were apparent.

Furthermore, difficulties in this area are doubly significant, as evidence of shortfalls in democratisation in a wider sense. The essential nature of democracy lies not in elections, though elections may act as a means to this end, but in the ability of civilians to challenge officials on an individual level, about the content and appropriateness of their actions. In this sense, the problems faced by NGO observers may be seen as indicative of the continuing immunity of officialdom from civilian scrutiny in day-to-day life in Cambodia.

### *3.1. Relations Between NGO Observers and Political Parties: The Conflict Over Vote-Counting*

For NGOs to impose themselves as arbiters of electoral legitimacy requires political parties to come to respect the observer movement as representative of an over-arching, unified and non-politicised national interest in ensuring that elections are properly implemented. A striking feature of Cambodia politics is the extent to which political parties attempt to present themselves as authoritative embodiments of the national interest, rather than as promoters of particular sets of policies living in pluralist accommodation with promoters of different policies, within the context of a unified civil society.

In 1998, the NGO observer effort failed to achieve this, and consequently, the release of NGO statements which ran contrary to the views of NUF parties led to rifts between them. The disillusion which came to characterise the relationship between NGO observers and the opposition political parties is observable from comments made by two opposition interviewees contacted for this study, one from FUNCINPEC and one from the SRP:

“I’m not happy with the NGOs. They told me that they had enough observers in each polling station but when I went to the station I didn’t see any observers. I noticed that all the observers were accomplices of the CPP. When the people had problems, [the observers] didn’t help them. So I ask the NGOs to cooperate with all the political parties to obtain transparency, not just with one political party.”

“COMFREL and COFFEL didn’t dare to do anything—they were oppressed. They are still scared. If they saw the police and military do something wrong, they were afraid to complain. We complained, but they didn’t listen.”

Different accounts of the integrity of the vote-counting process constituted a major problem for the relationship between political parties and NGO observers. In a post-election statement, COMFREL, COFFEL and NICFEC reported that their observers were present in 95 percent of polling stations in 15 provinces. NUF political party agents were also widely deployed. In the days following the vote counting, the two sets of observers apparently reported markedly different impressions of the process. Some of the problems which arose during vote-counting, and contributed to the escalation of this conflict are summarised in Figure 6.5.

**Figure 6.5. Problems in Monitoring Vote-Counting**

<b>Lack of Information or Difficulties in Collecting and Verifying Information</b>
<p><b>1. At the Counting Station</b></p> <ul style="list-style-type: none"> <li>• Security Concerns includes: (1) isolated incidents of disturbance to counting; and (2) claims that observers were too afraid to ask questions or to make complaints</li> <li>• Lack of Training (Both Officials and Observers) includes: (1) lack of understanding of correct ways of counting; (2) lack of understanding of how to complain; and (3) lack of understanding of roles and duties</li> <li>• Lack of Transparency includes: (1) increase in the number of counting tables; (2) failure to show ballots clearly; (3) failure to facilitate observers at night; (4) some difficulties getting access to counting stations; and (5) some claims of obstruction by officials</li> </ul> <p><b>2. From Phnom Penh</b></p> <ul style="list-style-type: none"> <li>• Decentralisation of the Counting Process (1) large number of counting stations; and (2) remoteness of some counting stations</li> <li>• Tense and Politicised Atmosphere (1) causes strong emotions/suspicious among political parties and observers</li> <li>• Lack of Resources/Time Allocated by the NEC for Recounting and Investigations</li> <li>• Failure to Follow Procedures Correctly includes: (1) mixing together ballots from different communes in different bags; (2) failure to allow observers to observe until all complaints were dealt with; and (3) incorrect completion of forms</li> </ul>

### 3.2. Immediate Causes of Conflict

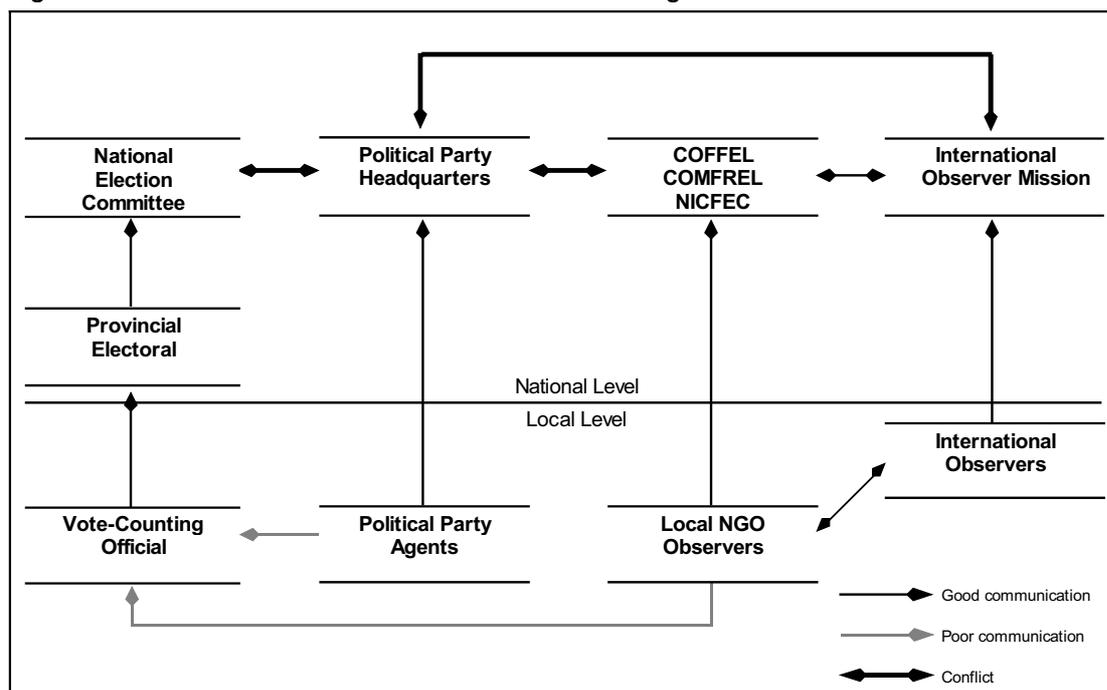
Three types of immediate cause contributed to this conflict, namely, lack of information, lack of transparency on the part of election officials in dealing with information, and differing interpretations arising from different background beliefs.

Figure 6.6 illustrates schematically the ways in which information circulated at local and national levels. The vote-counting process was highly decentralised, taking place in more than 1,600 commune-level counting stations throughout the country. Present during vote-counting were a variety of actors: election officials from the CECs; NGO election observers; political party agents representing, potentially, all the political parties competing for votes in that commune; and, intermittently, international election observers. Each of these local-level actors represented a larger, hierarchical structure, and held a brief to report back on the local situation to central headquarters in Phnom Penh. Organisation leaders would aggregate this information to formulate and disseminate an overview of the situation nationwide, to act as a check on the NEC. To the extent that consensus was reached, the authority of the electoral process would be enhanced.

Given the lack of communications equipment available to NGO and political party observers within the counting stations, in most rural areas of the country each local counting station must have acted as an isolated entity. Despite the comings and goings of various higher-level officials, international observers, and NGO and party leaders, for much of the day observers and officials found themselves alone together in the counting office.

Aside from rare cases, early reports from most counting stations suggested a peaceful environment throughout the country. Markedly different accounts of the process, however, emerged at the national level, after reports were gathered in from the communes. In particular, the parties in the NUF put forward a version of events which differed significantly from the versions released by national NGO and international observers, and the organising NEC.

Figure 6.6. Circulation of Information About Vote-Counting



The major complaints in the statements made by NUF leaders and members at press conferences in the week following the election (and among some observers interviewed for this study) were complaints over transparency and the alleged prevention of NGO and party observers from gathering and verifying information regarding the conduct of the vote-counting process. As counting continued on 27 and 28 July, the NUF parties claimed that problems faced by observers in the counting stations led some NUF party agents to the conclusion that election fraud was taking place. Often, however, this was due to the inability of observers to keep track of the counting processes, rather than due to any overt signs of cheating.

Such complaints indicate that even among the relatively small group of people at the counting station, information did not circulate freely, as indicated in Figure 6.6. For example, observers claimed that ballots were not shown clearly enough so that the observers could check that the number on the ballot paper called out by the counting official was in fact the number ticked; and that counting was conducted at more than one table at once, rendering parallel counting by observers problematic:

“Local authorities wouldn’t let them come to watch. In 1993 they showed the ballots clearly. They had everyone standing in an orderly fashion. But in 1998 they held the ballots so you couldn’t see them.”

“The NEC didn’t tell us in advance about the situation. There were three people in the station and then they divided the counting into ten tables. We said there was no transparency and no neutrality, but the NEC didn’t answer. When they split up the counting it was a big problem.”

The latter problem was the subject of a COMFREL, COFFEL and NICFEC recommendation in January 1999. The three NGOs suggested that the Election Law be amended to ensure that equal numbers of observers and tables were present in each counting station.<sup>3</sup>

<sup>3</sup> COMFREL, COFFEL & NICFEC, “Joint Statement Related to Electoral Law and the National Election Committee,” 27 January 1999, Phnom Penh.

These complaints were similar to those raised by NUF party leaders shortly after the election. NUF party agents, who denounced the counting process at press conferences after the election, also referred to:

- instances where election officials had been seen behaving suspiciously near ballot boxes;
- instances where the number of counting tables had been increased beyond the number of observers; and
- instances where observers had been unable to verify the numbers called out by officials.<sup>4</sup>

The length of time taken for counting was also a problem, particularly when it continued over-night. Two observers interviewed commented:

“After the election when they carried the box to the counting station, they didn’t put it in a safe area. So all the volunteers had to sit and sleep outside the station, and they put the box inside a room and locked the door. But then later, the lock on the door was found to be broken.”

“When we guarded the ballots at night, there were only a few places where we could see them. In some places they locked us out so we couldn’t see them. And then observers were tired [when counting resumed], because they had to stay outside all night. The next day they were exhausted.”

These accounts suggest that counting station officials may have given little thought in advance to the facilitation, as opposed to the toleration, of observers. Observers themselves were also unprepared for the length and intensity of the task. This impeded the ability of observers to remain alert, to collect accurate information, and to be aware at all times of how the ballots were being handled.

Among interviewees, mutual criticisms of conduct centred upon lack of training, experience and preparedness. For example, a FUNCINPEC interviewee commented:

“Political agents were not trained enough. FUNCINPEC always trained its political agents, but the time was very short and they [still] didn’t understand the electoral process clearly. The CECs also didn’t understand about the electoral process...”

An NEC member commented:

“In 1998 the percentage of observers that studied the procedures was very small—only COFFEL and COMFREL—because there was only a short time [available] and they had no experience.”

Similarly, an NGO observer remarked:

“The training of party agents was not properly done. They didn’t understand rejecting ballots. We had less power, they had more power than we did, but they didn’t understand.”

Perceptions by each group of participants of the marked lack of training and experience of other actors appear to have been widespread, and to have affected willingness to accept the validity of the information gathered by these groups.

The effect of poor training of observers must be understood in the context of the relationships between the actors in the counting station. Accounts given by NGO observers interviewed suggest that relations between NGO observers and election administrators in the context of the counting station during the counting process were fairly poor insofar as exchange of information is concerned. Accounts offered by interviewees suggested that communication between observers and

<sup>4</sup> Witnesses, press conference, SRP Headquarters, Phnom Penh, 30 July 1998.

officials was difficult, particularly where problems were perceived by observers. NUF representatives tended to offer a more pessimistic picture, in which political party agents and NGO observers watched, silent and fearful, as officials worked to obfuscate the entire process.

Origins of these issues may be found in a number of circumstantial factors, and they made the relationships between the different groups in the counting stations problematic. The 1998 election was the first organised by Cambodians since before the war. The uniqueness of the situation entailed uncertainty regarding appropriate behaviour and means of implementation. The short time available for training exacerbated this problem. Given long-standing distrust between political parties, and between state and society, it is likely that uncertainty engendered tension in the counting station, in particular between organising officials and opposition and NGO observers. Election observation is a new concept in Cambodia, and the wider principle of immediate accountability of officials to the complaints and interventions of civilians also represents a departure from past practice. The situation was an unfamiliar and a difficult one for these reasons.

Second, though the election process in 1998 was generally peaceful, interviewees held mixed views on the impact of fear in the counting stations. Some NGO observers said that they had been afraid, or that they had believed other observers in the same station were afraid. For example:

“There was a very great effect from [the events of] July 1997. Many political party agents didn’t dare file a complaint because of July, because of 30 March [1997—the grenade attack on a SRP demonstration outside the National Assembly]. And they are political party people, what about normal people? Even me, I was also afraid.”

NUF party interviewees suggested that fear was widespread and oppressive in the counting stations. A FUNCINPEC representative described the situation:

“I went to one place and all the observers were sitting at the other end of the room. I asked the polling station chief why they were over there? He said there was no room for them at the counting table. I asked whether I could call them over to the table. He said yes, but they didn’t move, they didn’t dare to come over.... Because the chief of the counting station had told them not to come. So there was threat and intimidation...”

In this account, the presence of perceived fear is explicitly connected with difficulties in collecting information, or in demanding the right to collect information.

Third, wider relationships dictated mutual expectations of standards of behaviour, which in turn affected interpretations of what was observed. Distrust characterised the relationship between the NUF parties and electoral organising agencies. Throughout the 1998 election process, the NUF parties repeatedly called for a review of the composition of the NEC, PECs and CECs, claiming that the membership of these committees were biased towards the CPP. This conflict was not successfully mediated before the election, and created an expectation among the NUF parties that foul play was likely. Such expectations may have heightened the tension in vote-counting stations, and may have altered the interpretations placed by NUF party observers upon the events they witnessed.

The different interpretations made by NUF parties, NGO observers, and international observers of what they saw in the counting stations mirror, to an extent, their different attitudes to the electoral committees. While both the NUF and COMFREL criticised the election committees from an early stage, and repeatedly called for adjustments to staffing, the NGOs adopted a more gradualist, reformist approach. The NUF called for root-and-branch changes, and operated on the assumption that the integrity of the elections would be violated by the electoral committees as constituted in early 1998. The NGOs, by contrast, took a pragmatic approach to problems of perceived bias in the electoral committees, mediating between NUF parties and local electoral committees in areas where specific problems arose. This approach suggested a belief that if procedures were properly followed, there was still an opportunity for a free and fair election. This

willingness to suspend judgement may have contributed to different perceptions of official behaviour inside counting stations.

From the accounts of interviewees, it appears that objections were infrequently raised or resolved in the immediate environment of the counting station. For example, in each counting station, observers were asked to sign a statement to certify that the counting process had been performed properly. In many cases, it appears that political party observers signed these statements even though they planned later to complain to their head offices about problems they had observed. This contributed to escalating conflict later, as the failure to speak out at the local level undermined the legitimacy of complaints in the view of electoral organisers, and some NGO observers, who argued that genuine protests would and should have been raised immediately at the counting station.

According to an NEC member interviewed for this study:

“[Party] agents signed the statements in the polling and counting stations, but the parties still complained. Some parties, two days after the election or after the counting, they began to complain. We didn’t know how to solve this problem, because the parties didn’t understand their duties. For example, if they knew members of the local authorities were there in the voting station, don’t wait until several days afterwards to complain.”

Similarly, a member of an observer NGO asked:

“We ask why was it that the party observers signed every form? Why did they stay quiet? If they hadn’t signed, we wouldn’t have released the result. But if you sign that you agree, then we release it. Our result was no different from the NEC score.”

Members of NUF parties contested this explanation, some suggesting that party agents had not signed statements except when compelled or tricked into doing so. A member of an opposition party suggested:

“Some representatives did not sign, but the authorities signed themselves. Also they forced people to sign. Intimidated or bribed them, or cheated them out of their signature by saying that the paper was something else.”

An NGO observer commented, by contrast, that the NUF parties did not raise questions at the counting station, even though they were entitled to do so, because party agents were unaware of the procedures for this:

“The political party agents didn’t understand. This was a problem of the NEC and a problem of the political parties, because the political parties didn’t train their agents properly. The CPP knew because they trained their observers properly. FUNCINPEC and the Sam Rainsy Party didn’t train them, and they didn’t know how to complain.”

Another NGO observer remarked that while there was a pre-prepared statement available for observers to sign to certify the process, there was no form available for them to register any concerns. This imposed a psychological barrier against making complaints on the spot, and increased the difficulty of verifying complaints later.

Furthermore, a number of NGO observers either agreed that fear was a factor at this point, or that they believed fear was a factor for the political party agents:

“Many political parties wanted to file complaints, but local agents didn’t want to file the complaint by themselves because they lived in that area and they were concerned about their safety.”

Because of these problems, interviewees suggested, many political party agents did not raise their objections immediately, but instead travelled to Phnom Penh to submit their complaints to their party headquarters.

National-level conflict arose as different accounts of the process reached Phnom Penh. NEC and CPP local representatives reported few problems during vote-counting. NUF party observers reported serious irregularities and abuses, significant enough to undermine the integrity of the process. NGO and international observers reported some irregularities in parts of the country, but viewed these as insufficient evidence of a systematic pattern of electoral fraud. These trends in interpretation remained consistent during interviews carried out for this study.

A major problem in resolving this conflict was the fact that the difference on which the conflict hinged was a difference of subjective impression of the intentions and activities of electoral officials. Little tangible or direct eyewitness evidence was available, aside from observer testimony as to their beliefs at the time, which may have been tainted by political motivation, fear, or lack of experience of electoral situations.

Mutual criticism between NGO observers, international observers, and NUF party observers of one another's performance heightened the crisis, by casting doubt on the quality and validity of different types of information coming from the counting stations. Equally, the assertion that different levels of fear were experienced by different individuals and organisations made it difficult to compare accounts of the process. The varying levels of training and confidence possessed by observers in different parts of the country were impossible to assess from the standpoint of Phnom Penh. The emergence of doubt undercut the authority of all information simultaneously.

It is also significant to note that lack of information about vote-counting and re-counting led swiftly to the circulation of rumours. In particular, the delays in the release of voting figures by the NEC led to widespread speculation over the results. Some newspapers published predictions, which led to speculation that some parties or organisations had inside information. Rumours of arguments within the NEC were also common at this time, and were used to explain the delays in the NEC's release of results. These rumours tended to increase the polarisation and emotion felt by different sides over the issue of vote-counting. Throughout the election process, the emergence of rumours in response to a lack of information, contributed to the escalation of conflict.

Transfer of conflict to the national political arena caused other problems. The major dispute was between the CPP and NEC on the one hand, accused of conspiring to commit fraud, and the NUF parties on the other, who saw themselves as the victims of this conspiracy. Both the environment in Phnom Penh and the time lag and distance between the occurrence of problems in the commune and the registering of complaints in the capital prolonged and politicised the conflict.

A major feature of the Phnom Penh environment was the greater organisational strength of the NUF parties *vis-à-vis* their CPP rivals than in the countryside. The NUF parties were in a stronger position to pursue their demands in Phnom Penh, despite their apparent electoral defeat.

Yet the balance between the parties was also characterised by intense polarisation and political machination. Early results, which indicated that the CPP would need to seek coalition partners in order to form a government, created a potential bargaining chip for defeated opposition leaders. It is unclear whether the NUF parties viewed allegations of fraud as a bargaining chip for gaining favourable coalition terms, or the withholding of coalition support as a bargaining chip for urging resolution of election complaints. The possibility of the former was sufficient to raise suspicions of ulterior motives behind the allegations of fraud.

Wider factors contributed to the escalation of these conflicts into an emotional appeal. The majority of Phnom Penh citizens had voted for the NUF parties, and were disappointed by the election results. Many were inclined to interpret the appearance of provincial observers with complaints as evidence that their own voting preferences were mirrored by their compatriots in the countryside. Also, the concentration in Phnom Penh during the election period of international organisations, perceived as being capable of de-legitimising the electoral process through a withdrawal of recognition, encouraged swift attempts by the NUF to maintain international engagement by quickly raising vociferous complaints. For these reasons, conflicts over irregularities escalated in intensity when aggregated at the national level.

This escalating conflict proved difficult to resolve, in part because of an unwillingness, on the part of the NEC and the CPP, to recognise the legitimacy of these complaints, and in part because of the institutional weaknesses in state procedures for resolving the conflict already described.

In this context, observer NGOs had little opportunity to make their authority felt. The rapid polarisation of the environment following the elections, which also contributed to the weakening of NEC authority, left them little role to play. The NGOs were ill-equipped to respond to the accusations and counter-accusations of the political parties, and the speed with which they mobilised their members into action. As demonstrations became focused on wider issues, of Khmer nationalism and alleged responsibility for a broad range of incidents in the past, the NGOs pragmatic, fact-based approach was overtaken.

Focus on the reactions and statements of international observers and foreign governments was particularly intense, and the ability of NGOs to attract attention suffered as a consequence. The link between international perceptions of the election and disbursements of aid implied that international judgements were more authoritative than local judgements. The disunity of foreign governments, in particular once individual members of the US Senate began to dissent from the statements made by international observer teams in Cambodia, undermined the ability of the Cambodian NGOs to present an authoritative view that could discipline the NUF parties into acceptance of the outcome.

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#### **4. Conclusion**

Like the NEC and Constitutional Council, NGO observer groups found themselves unable to fulfil the political task of pronouncing authoritatively on the election and of promoting allegiance to the results. In part this was due to technical and information-related problems in observation; in part, it reflected wider conflictual aspects of the environment, particularly after the election.

Observer NGOs groups were highly conscious of the need to pursue this political task further. Employment of strategies to strengthen their credibility with all political parties and state agencies between now and the next election offer an opportunity for observer NGOs to build on their experience of 1998, and increasingly to embed themselves firmly as a central component of electoral hegemony in the future.

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## The Role of International Support

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International support contributed to the election process in a number of ways: through provision of financial and technical support; through diplomatic channels; and through confidence-building measures such as monitoring.

Diplomatic moves were central to the return of the NUF politicians in time to participate in the election. International mediators drafted a framework for free and fair elections for these politicians, which was accepted by all parties as a basis for the return of politicians from Bangkok. The creation of a special operation to monitor the treatment of the returnees and their ability to participate in elections was an important confidence-building measure, enabling the returnees to travel around the country and to reorganise their parties without fear. Similarly, the United Nations Cambodia Office of the High Commissioner for Human Rights (UNCOHCHR) created teams of human rights monitors which monitored the human rights situation around the country during the election period. The Joint International Observer Group (JIOG) brought international observers to monitor the campaigning, polling and counting.

International monitors brought into Cambodia especially for the election were the subject of much controversy, as their statements shortly after the election generally praised the way in which it had been implemented. The interpretation of the situation by international monitors was contested by the NUF parties, which claimed that the international monitors were not competent to attest to the freedom or fairness of the election.

Sam Rainsy commented at a press conference shortly after the election:

“International observers cannot detect it, and even national observers, if they don’t live in the village, they don’t know the village, don’t know the responsible people in the village. If they are sent from Phnom Penh, they don’t know—they cannot read the fear in the hearts and the minds of the people.”<sup>1</sup>

Similarly, Prince Norodom Ranariddh told supporters after the elections:

“At first the international community came just to observe the appearance, but not the reality...99 percent they didn’t see. Because the French eye, and the eyes of other nations, cannot look into the Cambodian eye and understand. They just went into the polling station and saw they were all Cambodian, but they didn’t know that this Cambodian was a village chief, a commune chief. All these people that intimidate people at night—they didn’t see them.”<sup>2</sup>

International observer groups noted that a sampling method of observation, which means that international observers travel from one voting and counting station to the next, is the international standard for observation. A frequent criticism of international observers, among people inter-

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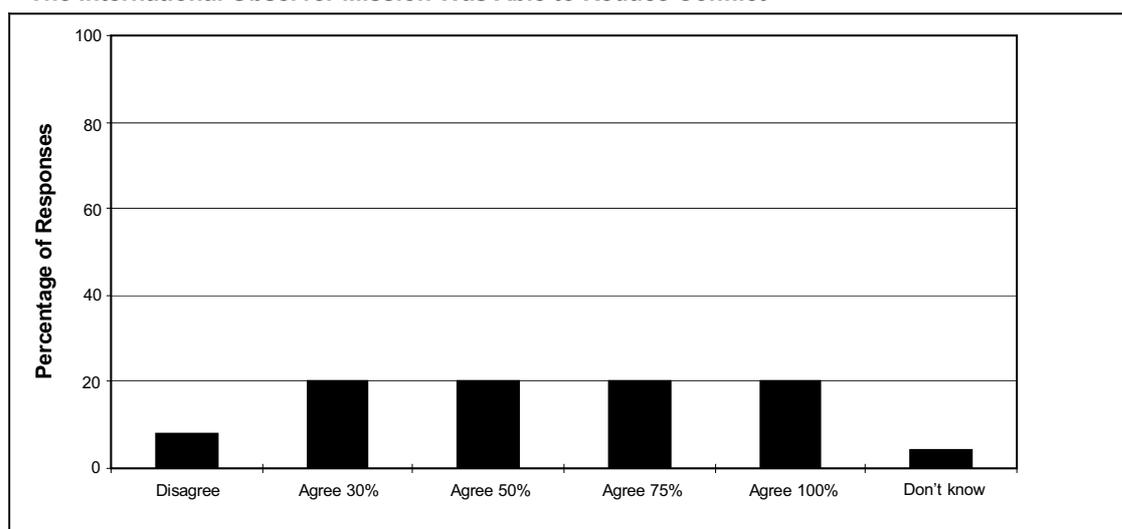
<sup>1</sup> Sam Rainsy, press conference, Phnom Penh, 29 July 1998.

<sup>2</sup> Prince Norodom Ranariddh, speech to party supporters, Phnom Penh, 8 August 1998.

viewed for this report, was that international observers did not spend long enough in each place, or did not understand what they saw.

The criticism that international observers were not sufficiently widely deployed suggests a belief among some that the purpose of the international observers was to prevent fraud from taking place. NGO respondents interviewed for this report were asked to comment on the statement “the international observer mission was able to reduce conflict.” The extent of their agreement is shown in Figure 7.1. This statement generated the most even spread of responses of all the statements put to NGO interviewees for this research.

**Figure 7.1. Perceptions of Organisations:  
“The International Observer Mission Was Able to Reduce Conflict”**



Comments made by interviewees suggest that the lack of consensus on this issue arises from a lack of agreement about the aims of the international observer mission. A selection of the comments related to this issue made by NGO respondents are as follows:

“The international mission increased conflict... After the NEC announced the result, the EU recognised it, but they didn’t survey the situation. This made the conflict worse. International monitoring was only 15 minutes or 30 minutes in one place. It took them a long time to travel from one place to another.”

“There were not enough international observers. The problem was that they were not neutral. Most of them didn’t want to go and meet the people. They came and they didn’t know Khmer, didn’t see or know anything.”

“When one of the international monitors or observers was directed to the polling station, they had someone with a radio or telephone who told them they were coming, so they behaved well. They prepared to meet the international observers. I would say [the observer mission reduced conflicts] 50 percent, but that is generous, because of the short time that the international observers were there. They might reduce conflicts while they were there, but they didn’t resolve anything.”

Other respondents, by contrast, remarked that international observation should not be viewed as a check on the activities of election officials. Two NGO respondents remarked that this was a job for Cambodians rather than foreigners:

“This is an issue for Cambodians. Do they have international observers in any other election? When UNTAC was here, we didn’t know about the process. But we saw what foreigners did well, and we learned.”

“International observers cannot replace local observers. How can we have democracy in Cambodia if we always rely on international observers?”

Similarly, a senior NEC member commented:

“It is not necessary for the international community to accredit the election—the local committees should do that. But the process is full of mistrust and revenge, and the international observers ensure confidence.”

Confidence-building was commonly perceived as a major role for international observers. A national NGO observer commented:

“International observers encouraged people to go out and vote rather than reducing conflicts.”

This view was echoed by an interviewee from a state agency:

“They cannot change anything, but if they stay [in the polling station], then the people feel more confident.”

Like a number of other conflicts discussed in this study, there is a problem when the role of the agency in question is defined differently by different groups. Criticisms that international observers could not speak Khmer, were not “neutral,” or could not recognise the faces of potential intimidators in the village, suggest that expectations of group demanding they play this role were too high, given the short time that many international observers remained within Cambodia.

International observer groups themselves put forward a range of different aims and objectives for the observer missions. Some simply stated that their aim was to observe the election. The Volunteer Observers of the Cambodian Election (VOCE) stated their aims as being:

“To contribute to the confidence of Cambodian voters by the presence of international observers, to help discourage those who might interfere with the process of voting or counting, and to help restrain any propensity of disappointed candidates to unjustifiably dispute poll results.”<sup>3</sup>

The EU’s pre-election briefing suggested that EU observers would assess electoral activities in the light of international standards, as a form of accountability imposed on the funds donated by the EU:

“In the Financing Agreement, the EU reserved the right to suspend its support to the NEC if the conditions conducive to the holding of free and fair elections in accordance with international standards were not present.”<sup>4</sup>

A delegation from the US International Republican Institute (IRI) and National Democratic Institute (NDI) stated that the institutes “work to promote democratic institutions and processes worldwide,” but added specifically that they “did not seek to interfere with or to certify the election process. Ultimately it will be the people of Cambodia who will judge the legitimacy of these elections.”<sup>5</sup>

<sup>3</sup> VOCE, “Volunteer Observers of the Cambodian Election (VOCE) Finds the Election Free and Fair,” Phnom Penh, 28 July 1998.

<sup>4</sup> Delegation of the European Commission to Cambodia, “Background Brief,” Phnom Penh, 23 July 1998.

<sup>5</sup> IRI-NDI Delegation, “Preliminary Statement of the IRI-NDI Delegation to the July 26, 1998 Elections in Cambodia,” Phnom Penh, 28 July 1998.

The latter comment is significant. It highlights the fact that only the Cambodian electorate themselves can imbue a particular political process with legitimacy, by forging a consensual acceptance of the process that imposes a moral imperative upon the actions of Cambodians themselves. The assessments of foreign observer missions can impose obligations on foreign governments to recognise the Cambodian government, but the principle of self-determination implies that only Cambodians can decide whether a particular government has domestic legitimacy.

At times during the electoral process it appeared that greater weight was being attached to the statements of international observers than to the comments of local observers. Great attention was paid to international observers by demonstrators. The statements of international observer groups in themselves, however, cannot provide legitimacy or authority to the election result.

International monitoring can contribute to establishing international legitimacy, by providing information to foreign governments, but international legitimacy is a quite different concept to the concept of domestic legitimacy. The connection between democracy and international legitimacy is recent, and is still not well established in international law and international practice. In part because of this, governments claiming international legitimacy on the basis of having won national elections benefit strongly from a presumption of innocence from other international players. Opposition parties claiming the illegitimacy of any government in the international arena must present evidence in order for their claims to be recognised internationally. This was reflected in statements made by international observer groups after the 1998 election, which emphasised a lack of evidence to support allegations of fraud.

In the domestic polity, by contrast, legitimacy is created by building confidence between state and society. In a multi-party democracy, this is achieved by conducting procedures transparently, so that justice can be seen to be done. The onus of proof, according to liberal democratic political theory, is upon governments to demonstrate their right to rule, by investigating all complaints thoroughly, impartially and transparently. In a highly polarised situation, this is a difficult task, particularly where state agencies are weak and are not widely trusted. Statements of support from foreigners, however, which rest on the presumption of innocence, cannot alone imbue a government with authority over its own people. Consequently, they cannot substitute for a full accounting by a government to its citizens in the process of promoting the legitimisation of power.

Developing a common Cambodian position on this, between political parties, election organisers and observer NGOs, would facilitate negotiations with international agencies over the nature and extent of election support, and would also help to strengthen a common understanding of the role of Cambodian actors in the elections.

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## 1. Wider Conflict Prevention and Resolution by International Agencies

Although the international observer mission received mixed reviews from NGO interviewees, there is nevertheless a strong tradition in Cambodian politics of resort to international advisers, mediators and donors in times of conflict. The UN Secretary-General's Personal Representative to Cambodia describes present international engagement as being founded upon the Paris Peace Agreements of 1991:

“The UN Secretary-General is still bound [by the Paris Peace Agreements], and all the signatories of the agreements are still bound. The new Kingdom of Cambodia as an entity came into being as a signatory to the Paris Agreements. They have no freedom to go back on that. It is my job to observe that the objectives are being met, that the aims and objectives and spirit and letter of the Paris Agreements are still being met, that the Constitution is upheld and that multi-party democracy is still being promoted, and that Cambodia has the opportunity to develop further. Representatives of the Secretary-General of the United Nations have a responsibility to observe this process and to assist where necessary, with the mutual agreement with the Royal Government of Cambodia, and with their cooperation.”

This mandate gives the United Nations extensive powers to scrutinise, advise and intervene in Cambodian politics. In addition, the reliance of Cambodia on foreign aid awards a certain degree of leverage to foreign donors over Cambodian government policy. The leverage provided by international aid is a broad leverage, however, which can be used to express approval or displeasure in general terms, but is not well-adapted to fine tuning of policies.

International disapproval played an important part in setting the stage for a return of NUF politicians and an election in Cambodia. A Japanese-sponsored peace plan provided the formula by which the grievances of the various parties following the July 1997 fighting were to be resolved. A “free, fair and credible” election was central to this plan, just as the 1993 election had been central to the comprehensive political settlement of the civil war of the 1980s.

In designing and monitoring these elections, two UN organisations based in Cambodia have played an extensive role: the Office of the United Nations Secretary-General’s Personal Representative in Cambodia (OUNSGPRC) and the United Nations Cambodia Office of the High Commissioner for Human Rights (UNCOHCHR).

The activities pursued by these offices were distinct. The OUNSGPRC was involved in the electoral process in five ways: advising and assisting in the creation of the legislative framework for the election; mediating between the government, members of NUF parties in exile and the King to facilitate the safe return of NUF politicians to participate in the election; monitoring that return; monitoring the conditions under which returned NUF politicians participated in the election; and negotiating in an attempt to avoid violence after the election.<sup>6</sup>

The UNCOHCHR also commented on the legislative framework for the election; received and investigated complaints of human rights abuses following the fighting in July 1997, during the election campaign and after the election; negotiated with the Cambodian government over the issue of providing redress for abuse; monitored access to the electronic media in the period leading up to the election campaign; and published findings on the level of abuse inside Cambodia.

Both agencies established special teams of monitors in different provinces for the period of the election campaign to enable wider scrutiny of the environment before and after the election.

Backed by international pressure, the powers conferred by the Paris Peace Agreements were exercised by the UN Secretary-General’s Personal Representative in August 1997 in helping to negotiate the return of absent politicians from Bangkok, in the face of reluctance on the part of the politicians themselves. He commented:

“The King was the first instrument of bringing change. I met him soon after his return and asked him what should be done. He said nothing could be done. He had met with a delegation of seven of the self-exiled politicians in Beijing... their advice was that His Majesty should take no initiative for their return, because they would not come back. I said I could accept that as a temporary measure, but that it could not be permanent. They must return, or the objective of the Paris Agreements to have multi-party democracy in Cambodia will be defeated.”

The representative went on to describe how international diplomacy put pressure upon then-Second Prime Minister Hun Sen to issue a written guarantee for the safety of the politicians should they return to Cambodia. Subsequently, a monitoring operation was created within the Personal Representative’s Office to “ensure that the letter... would be duly implemented, that there would be no threat to [the returnees’] security.”<sup>7</sup> International monitors were available to returnees 24 hours a day, and followed them on campaign trips around the country, before, during and following the election campaign. They monitors also reported to the United Nations in New York on the ability of NUF politicians to participate on an equal basis in the election.

<sup>6</sup> Lakhan Mehrotra, Personal Representative of the United Nations Secretary General, personal interview, Phnom Penh, 12 April 1999.

<sup>7</sup> Lakhan Mehrotra, personal interview, Phnom Penh, 12 April 1999.

These monitors were particularly involved with crises after the election campaign, when threats of arrest were made against opposition politicians involved in demonstrations. Two of these cases involved Sam Rainsy, when he was briefly detained at the Ministry of Interior on the night of 20/21 August, and when he took refuge in the Office of the UN Secretary-General's Personal Representative inside the Cambodiana Hotel during the first week in September.

On the occasion of 20/21 August, Sam Rainsy was detained following an incident outside the NEC headquarters at the Ministry of Interior compound. Some SRP members were staging a vigil outside the office in which ballot papers were stored, in protest at the suspension of recounting procedures. While the vigil was taking place, a grenade was thrown and shots were fired from a passing vehicle, killing a driver working for a Japanese media organisation. Immediately afterwards, Sam Rainsy was detained by Ministry of Interior security forces, along with some other members of his party.

A high level of political tension at this time meant that the situation at the Ministry of Interior was fraught with risk. The explosion of one grenade, and the death of one bystander, raised the possibility that further violence would follow. High-level diplomatic moves were made over this issue, within both the United Nations and the US Embassy. The swift mobilisation of international monitors and the exertion of pressure by foreign diplomats in response to this suggests that these operate as a check upon the escalation of conflicts in the Cambodian political system.

The mobilisation of diplomatic pressure in situations involving high levels of political tension are not matched by similar domestic checks on conflict escalation. There are few political institutions in Cambodia which have the authority to intervene in conflicts between political parties in order to prevent violence. Within the state, neither the National Assembly nor the judicial system has shown itself capable of preventing inter-party conflict by means of statements, motions or judgements. Similarly, civil society organisations have tended to allow international organisations to take the lead in situations of political tension, especially if there is fear of violence. For example, the UNCOHCHR played a leading role in investigating and challenging the government over alleged incidents of extra-judicial execution in the months following July 1997, as a climate of fear constrained the ability of domestic human rights NGOs to confront the government on this issue. The director of the UNCOHCHR commented upon the importance of engaging foreigners in human rights scrutiny after the July fighting and during the electoral period:

“Unfortunately it is still easier for foreigners to get access to governors and police chiefs. And they provide physical security for Cambodians, and for the complainants and investigators.”<sup>8</sup>

The element of physical security provided by the presence of foreigners again became important during post-election demonstrations. UN monitors attended the demonstrations daily, to observe the conduct of the demonstrators and the security forces. In an interview for this study, the UNCOHCHR director remarked that there is little experience or tradition in Cambodia of an appropriate way to deal with large-scale and extended demonstrations:

“Our presence and the presence of [OUNSGPRC] monitors was extremely important. The demonstrators and the police were novices. The demonstrators had no experience of being demonstrators, and the police had virtually no experience of handling large crowds.... If the demonstrators had started throwing stones, or if the police had started firing into the crowds, there could have been a disastrous outcome. There was no organisation of marches—parts were staged but parts were spontaneous. Therefore there was a much higher risk than if they had just marched around a pre-determined route. So the presence of the UN was extremely important.”<sup>9</sup>

<sup>8</sup> Rosemary McCreery, Director, UNCOHCHR, personal interview, Phnom Penh, 9 April 1999.

<sup>9</sup> Rosemary McCreery, Director, UNCOHCHR, personal interview, 9 April 1999.

Similarly, the OUNSGPRC operated as a safe haven and neutral meeting ground in early September, after Sam Rainsy took refuge there, allegedly in fear of his life after a warrant was issued for his arrest. The Personal Representative was able to act as a central point for passing information to all sides. Ambassadors resident in Phnom Penh were also engaged in this process, and the presence within the OUNSGPRC office of a hotline to the UN Headquarters in New York facilitated the exertion of international pressure on all sides to come to agree to avoid violence.

Both the Personal Representative and the UNCOHCHR director commented that they believed the violence associated with the break-up of demonstrations from 7–14 September could have been significantly worse than it actually was, and that this was likely to have been partly due to international monitoring and negotiation.

The significant power of the UN and foreign diplomats in Cambodia is evident in these accounts. All sides in the Cambodian polity appear to grant the UN and foreigners special rights to intervene, particularly by means of diplomacy and monitoring, in Cambodian political crises. In part, this must surely be due to the level of Cambodia's dependence on foreign aid, which awards international agencies significant leverage. But the dependence on foreign intervention in negotiations is also a sign of the level of distrust in the Cambodian polity, which has in itself become a barrier to the interests of the parties.

It appears that, in some situations, politicians fear to come to terms, in case they discover later that they have been outmanoeuvred or that their opponent has reneged on an agreement. The intervention of outsiders, particularly in drafting criteria and frameworks for action, acts as a guarantee against "political tricks." Furthermore, acceptance of plans developed under foreign auspices also benefits weaker Cambodian actors, as it prompts foreigners to remain engaged, as observers or monitors, not only to ensure that the other side will fulfil its half of the bargain, but also to protect them, in case the solution brokered itself generates further crises in the future. In the case of the parties which are weak, maintaining open-ended foreign engagement is a rational strategy for their own protection.

It may be argued further that, in periods of crisis in particular, political leaders become trapped in their own polemics. Having vilified their opponents as terrorists and traitors, politicians may be unwilling to then come to terms, for fear of being perceived as "selling out" by their followers. In this scenario, the intervention and demands of foreigners, on whom cash flows depend to a significant extent, can be used to sell a solution to discontented supporters, by presenting it as a pragmatic concession made to protect aid.

Furthermore, in protecting the leaders of political parties from acts of violence, which may be carried out unilaterally by aggrieved individuals, international intervention helps the Cambodian government maintain discipline in times of high political tension. This was particularly true during the post-election demonstrations. The government would have faced significant censure at home and abroad if an opposition leader were killed or demonstrators massacred by frightened or reckless police. International monitoring in such cases protects government and opposition alike from the wider ramifications of acts of violence. International mediation assists the parties by preventing distrust from countermanding mutual interest in arriving at a solution.

Yet international intervention may equally encourage political parties to play at brinkmanship, secure in the knowledge that international mediators and negotiators will step in to limit the damage. International intervention cannot replace an evolution on the part of Cambodian politicians themselves towards tempering their political discourse and establishing and promoting channels of communication and trust between the parties. The goal must be the creation of a Cambodian multi-party arena for political action, established according to Cambodian rules and policed by Cambodians, and capable of being sustained without international intervention.

This is particularly important as, despite the grounding of international power within Cambodia in the 1991 Paris Peace Agreements, there has been much uncertainty in recent years as to the level of commitment that the "international community" maintains towards Cambodia. During

post-election demonstrations, both Prince Norodom Ranariddh and Sam Rainsy suggested that active US intervention in support of their parties was a possibility. Leaflets circulated during demonstrations suggested that a US invasion was imminent. A debate in the US House of Representatives over whether Hun Sen should be investigated for war crimes were widely reported in Cambodia, and in some instances were interpreted as heralding US intervention to remove the newly-elected prime minister from his post.<sup>10</sup>

In fact, it is unlikely that the signatories to the Paris Peace Agreements will take significant action over issues internal to the Cambodian polity. There is disagreement, even within UN circles in Phnom Penh, over whether the Paris Agreements impose a duty upon the UN to intervene in political crises. Differences in strategic outlook between the most important great powers in the Asia-Pacific region, the United States, China and Japan, are likely to rule out any future significant action in Cambodia. The different positions of the US and China on the issue of an international tribunal for former Khmer Rouge leaders are an instance of this.

Future action by foreigners in Cambodia is not likely to go far beyond diplomacy, technical assistance, and the sending of international monitors when UN finances and priorities allow. Although foreign-sponsored plans and mediation are a useful resource for conflict resolution in Cambodia, they should not be viewed as a permanent substitute for the development of internal institutions which can apply the same level of authority to political problems. Dependence on international organisations will foster uncertainty and insecurity, as international action is more heavily dependent on the interests and priorities of foreign governments than on the objective situation in Cambodia, and is thus not predictable. The principle of self-determination suggests that scrutinising and safeguarding democratic institutions of governance is appropriately a task for Cambodians themselves.

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<sup>10</sup> Debate of House of Representatives 533 expressing the sense of the House of Representatives regarding the culpability of Hun Sen for war crimes, crimes against humanity and genocide in Cambodia, 10 October 1998, Congressional Record, pp. 10,450–10,453.

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## **Conclusion**

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The conflicts presented in the preceding chapters have been analysed on three levels, the level of immediate cause, the level of institutional structure and the level of political community. The experience of conflict surrounding the 1998 election suggests that at all these levels problems or weaknesses can be identified which render the smooth functioning of elections in resolving political conflict difficult.

Furthermore, examination of these conflicts suggests that problems on these three levels are linked, and affect one another in such a way as to promote weakness. For example, lack of a sense of political community between the major political parties contributes to institutional weakness. Parties view appointments to public office with suspicion, and seek to undermine public officials who are viewed as sympathetic to political opponents. Both administrative staff responsible for organising the election and NGO observers described the difficulties and risks to reputation and personal safety inherent in attempting to mediate conflict in atmospheres of high political tension.

In turn, institutional weakness contributes to the perpetuation of divisions in the political community. For example, the failure to address concerns about the neutrality of the electoral committees, the Constitutional Council, the security forces and local authorities in a satisfactory way entailed that suspicions still lingered among interviewees representing the NUF, months after the election was over and the question of governance had been resolved. A vicious circle traps fledgling state agencies between powerful and antagonistic political parties. The mutual distrust of the parties leads them to perpetuate the emasculation of agencies perceived as potential threats to their own interests. In this context, mundane problems of information, priority, or definition assume the proportions of national crises, as described in the present study.

In developing an approach to conflict resolution applicable to electoral conflicts, this political context is an important factor. The inexperience of election organisers in an atmosphere of extreme distrust allows almost any problem to escalate beyond the reach of domestic mediators. Consequently, emphasis on technical solutions is unlikely to be effective. Although the technical achievements of election organisers in 1998 were impressive, perfection cannot be attained. Over-regulation of technical matters is likely to cause more mistakes, and more sources of conflict, if technical remedies are pursued in isolation without reference to the wider political context.

Improvements to technical infrastructure, such as means of communication, procedures for appointments, circulation of information, and, in particular, the development of procedures for ensuring transparency and for re-checking disputed elements of the process, are more pertinent. This is partly because such improvements have a political, as well as a technical impact.

Both the authorisation of facts and the convergence of interpretation and prioritisation can be promoted simply through the strengthening of technical means of communication and information circulation, particularly if all parties engage in the same infrastructure on the same terms. The beginnings of public debate were noted in the round-table broadcasts and NGO-organised public

forums in 1998, and further steps in this direction contribute to narrowing the divisions between political parties.

Yet in the final analysis, the conflicts which surrounded the 1998 election were political conflicts, which require political solutions. As described in Chapter Seven, international organisations were responsible for supplying much of the overtly political framework for the 1998 election. There was also a large amount of international mediation when the various electoral conflicts reached their climax in early September 1998. Building domestic political structures capable of handling such conflicts requires tackling a number of pressing political questions.

Fear and insecurity were important factors in many of the conflicts outlined in the present study. In part this is a result of Cambodia's turbulent history. In part it is the result of other causes, such as: ongoing violent practices, on the part of various agencies of state as well as non-state actors; institutional weaknesses in the security and legal systems; and alarmist rhetoric on the part of political parties and their supporters.

An easing of the climate of fear which existed in Cambodia in early 1998 is necessary before steps can be made towards the establishment of the "consensus on the fundamentals" necessary to make conflict "less than conflict." Consensus is at present precluded by the distance between the political parties; their lack of communication; their belief that their opponents are prepared to use any means to defeat them; their willingness to manipulate agencies of state for the purposes of political competition; and belief that their opponents are doing exactly the same. Establishment of a basic level of security can begin to overcome the distrust that paralyses progress on questions of depoliticisation.

A further important factor noted in a number of conflicts was the tendency on the part of political parties to view international support as the final arbiter of disputes. This tendency focused the attention of political parties away from the search for a political solution to electoral problems that would bind all Cambodians to a process which served their common interest in reconciliation and peace. Rather, it encouraged exaggeration of concerns and the entrenchment of positions, particularly over issues where international intervenors themselves appeared divided. Orientation towards foreign adjudication can promote division, by obviating the need to search for a self-policing, self-sustaining compromise between the local parties.

Recognition of the problems caused by the deeply divided nature of the Cambodian political community dictates the need for preventive action. Some steps were made in this direction in 1998, for example in efforts to minimise the role of the security forces in the election. In other areas, such as the handling of cases where potential conflicts of interest were raised with regard to particular election staff, procedures were not in place to overcome these problems and promote confidence on the part of the complainants.

These points suggest three central recommendations for Cambodian electoral organisers and electoral participants:

- Action to reduce the general climate of insecurity in Cambodia, by improving the legal and security systems and by tackling the question of social and political violence generally;
- Recognition of the interdependence of the Cambodian political parties, and greater focus on mutual interests, mutually beneficial solutions, and jointly implemented safeguards for handling conflict. This entails reduced emphasis on attracting international backing in order to prevail; and
- Recognition that the deep distrust in the Cambodian political community means that perceived or potential conflicts of interest are a legitimate concern, on the part of NGOs, governing and opposition parties, or the public at large. The political task of electoral organisers lies in active efforts to overcome these problems by establishing their authority and impartiality in the eyes of all parties.

The difficulties inherent in these tasks is clear. In particular, an essential component missing from Cambodian elections is custom. Tradition defines freedom and fairness to a great degree, and expectations of “free and fair elections” are consequently self-fulfilling to a great extent. Many of the complaints related to polling and counting in the 1998 elections were essentially suspicions. A search for strategies to reduce suspicion and to enhance confidence of all parties in agencies of state is needed. Paradoxically, the task of depoliticisation of the state is a political task, requiring the subordination of immediate party interests to the long-term interests of depoliticisation.

If such strategies are successful, a start can be made on the task of rebuilding trust between Cambodian political parties. A greater measure of trust would diminish the number of complaints made and permit a measured exploration of those remaining. Establishing trust requires positive efforts by electoral participants, not only to fulfil their obligations as they perceive them, but to meet the concerns of opponents, and to promote convergence of perceptions. Recognition of this as a political task facing all electoral participants, including election organisers and observers as well as political parties, is a prerequisite. Continued pursuit of this task is necessary over a considerable period of time, before adjusted expectations contribute to the building of both institutions and community.

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## **Recommendations for the Commune Election**

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The following recommendations for the commune election were proposed during the *Conference on Conflict Prevention in the Commune Election*, held in Phnom Penh from 14–15 June 1999:

### *1. Institutions*

- Build the trust and confidence of political parties in the neutrality of the NEC and the Constitutional Council;
- Create clear procedures for handling complaints; and
- Make use of national and international observers as witnesses when handling complaints.

### *2. Security*

Promote collaboration among civil society, the NEC, the armed forces and local authorities to:

- Improve knowledge of human rights;
- Educate people about the role of the armed forces;
- Improve the trust and confidence of civilians in the armed forces, to reduce intimidation and fear;
- Put in place mechanisms to deal with complaints and conflicts promptly, locally and without fear of reprisals, and to punish those guilty of violence or intimidation swiftly and according to law; and
- Work to reduce the culture of fear generally.

### *3. Voter Education and Observation*

- Increase collaboration between civil society, the NEC, government and donors to identify education methodologies and to prevent overlap of efforts;
- Improve the relationship between national observers and political party observers;
- Organise more round-table meetings at the local level; and
- The NEC to accept collaboration with civil society within the framework of a working group throughout the election process.

### *4. Legal Framework*

- Implement the Election Law consistently over a long period;

- The government should conduct a survey to discover whether the people prefer a commune chief or a commune council;
- Put the Election Law, electoral systems and procedures in place early, after extensive consultation and debate;
- Ensure that the widest possible range of civil society can participate in the electoral process;
- Promote the participation of women in the commune election; and
- Promulgate the Commune Election Law at least nine months before the election.

#### 5. *Role of the Media*

- Conduct workshops or conferences to train journalists and strengthen their skills and morality;
- Establish a clear definition of terms such as “fairness” and “equity”;
- Eliminate political party ownership of television and radio stations; and
- Promote the independence and non-partisanship of the media.

#### 6. *International Assistance Programme*

- International organisations should continue their support for the NEC;
- International monitors should have more detailed knowledge of the election process; and
- The NEC should report to donors.

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## **Organisations Participating in the Study**

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### *State Agencies*

Ministry of Interior

Ministry of Information

National Election Committee (NEC)

### *Non-Governmental Organisations*

Cambodian Bar Association

Cambodia Defenders Project

Cambodian Disabled People's Organisation

Cambodian Human Rights Association (ADHOC)

Cambodian Institute for Human Rights

Cambodian Volunteers for Community Development

Cambodian Women's Development Association

Cambodia Community Building

Center for Social Development

Dhammayietra Centre for Peace and Non-Violence

Human Rights and Community Outreach Projects (Outreach)

Human Rights Vigilance of Cambodia (Vigilance)

Indradevi Women's Association

Khmer Cham Islam Minority Human Rights and Development Association

Khmer Kampuchea Krom Human Rights and Development Association

Khmer Students' and Intellectuals' Association

Khmer Women's Voice Centre

Khmer Youth Association

People's Association for Democracy

Socio-Economic Development of Cambodia (SEDOC)

SILAKA

Star Kampuchea

Urban Sector Group

Women's Media Centre

### *Political Parties*

Cambodian People's Party<sup>1</sup>

Free Republican Development Party

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<sup>1</sup> Three representatives of the Cambodian People's Party were also contacted, but were unavailable for interview during the time-frame of this research project. Some CPP representatives were interviewed in their official capacity rather than as party spokespersons.

FUNCINPEC (Front Uni National pour un Cambodge Indépendent, Neutre, Pacifique  
et Coopératif)

Khmer Democratic Party

Khmer Improvement Party

Sam Rainsy Party

*International Organisations*

Cambodia Office of the UN High Commissioner for Human Rights

Office of the UN Secretary-General's Personal Representative in Cambodia

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