

Cambodia's Electoral System: A Window of Opportunity for Reform

Jeffrey Gallup

Foreword by Kassie Neou

Foreword

I am pleased to write this foreword to Jeffrey C. Gallup's study of the Cambodian electoral system. There are many Cambodians both inside and outside the country who will endorse heartily every word he has written. Some might say he has painted a rosier picture than reality. Others may find his assessment too harsh. They would say that not enough credit has been given for progress and achievements to date and more explanation is needed about the obstacles. One such obstacle comes readily to mind – the very poor state of Cambodia's education system and the lack of human resources. These are major handicaps to progress. What is important is not whether Mr Gallup's words are laudatory or critical, but that they are written to help Cambodians identify and address areas for improvement in their electoral system. As the electoral system is strengthened, so will the prospects for Cambodian democracy and a peaceful and prosperous future. Mr Gallup's report should thus be studied closely for the insights and useful suggestions for reform that it provides. I agree with him that the present provides a unique opportunity to make needed changes in the electoral system. I agree that Cambodia's democracy is not yet firmly established, but from my unique position of being both inside and outside of Cambodia's election and democracy-building machinery, I would wish to portray a more optimistic view.

When a country has endured the scale of tragedy and resultant trauma that has befallen Cambodia in recent decades, it would be surprising if a recovery were quick or certain. Yet Cambodia has come a long way in just ten years since the Paris Peace Accords. Those Accords represented a comprehensive attempt to end prolonged conflict. But the fate of Cambodia, in terms of peace, justice and prosperity, depends on Cambodians at every level in society, from the top leadership down to the humble rice farmers. After all, this is what our nascent democracy is all about and that is our recipe for avoiding a repetition of the tragedy of the past.

I do believe that we are beginning to move towards pluralism. Some progress

may already be irreversible, and there are significant opportunities that could begin to dismantle the very real polarization in society that Jeffrey Gallup describes. When I first joined the National Election Committee (NEC) I was aware of its political balance and the limitations of all of us, myself included, in terms of our technical knowledge. Today there is a better balance, we have all learned a lot, and there is evidence to show that the NEC is delivering better elections for the people of Cambodia. For example, for the February 2002 local elections, the NEC agreed to re-open some 24 voter registration stations, extending the original schedule. This meant that 594,120 more people were able to register, increasing the voter registration turnout by 9.5 per cent to attain an overall figure of 83.04 per cent, a figure that many advanced democracies would envy for local elections.

There is a tendency, both inside and outside Cambodia, to be hypercritical about its government and political system. What is imperfect is deemed worthless. Oddly enough, this attitude seems to spring from deep affection for Cambodia and fervent hopes for the country's future. Were people indifferent to Cambodia, they would not bother to criticize it. Many countries with worse problems than Cambodia's escape censure because nobody cares. It is Cambodia's blessing – and its curse – that so many are concerned about us. Still, positive praise for good moves could encourage more such moves, whereas endless castigation falls on deaf ears.

I do take satisfaction in positive achievements. Much credit must be given for the impetus towards democracy generated by Cambodia's vibrant civil society. Most certainly, there will be setbacks. I like to say 'Angkor Wat was not built in a day'! Our famous world heritage site, Angkor Wat, is a symbol of a once proud ancient Khmer civilization. I believe that Cambodians can recapture that pride and build a modern civilization, but it will take time, just as it took many years for the other great democracies of the world.

Now that I approach the end of my term as NEC vice chairman, I can reflect on the NEC's role in Cambodia's emerging democracy. The NEC is gradually evolving into one of the country's important state institutions, but more needs to be done. Some of my recommendations parallel those of Mr Gallup; others do not. My suggestions focus mainly on the structure and operation of the NEC, which is my area of special expertise. The following is a proposed agenda for reform:

1. The NEC should be separated organizationally and physically from the Ministry of the Interior. It should have its own premises in the capital and the provinces.
2. The Committee membership, the top policy and decision-making body, should be restructured so as to reduce the present 11 members to 5 or 7. This will produce swifter, more corporate management.

3. Membership should be non-political, genuinely neutral, so 'party representatives' should be removed. Membership should instead be based on factors such as distinguished public service or professional and technical expertise. If past or serving government officials are appointed, they should be drawn from the ranks of a neutral professional civil service, rather than party appointees. Above all, the members should enjoy the confidence of the people and civil society, and the respect of the political parties.
4. The permanent staff of the NEC should consist of election administration and support professionals only. The level of staffing should be based on organizational need, i.e. actual workload at national, provincial or local levels.
5. The NEC should have one secretariat office, instead of several, connecting the NEC members with the staff. Having several offices (recently introduced as a reform) has engendered confusion, lack of co-ordination and high personnel costs.
6. Finally, but quite importantly, the NEC should look for ways to improve the area of its weakest performance in 1998 – post-election dispute resolution. Internal procedures should be elaborated and more resources devoted to settling complaints. The NEC should emphasize transparency by holding public hearings on important controversies. Indeed, transparency and accountability should be the guiding principles in all NEC decisions.

These organizational changes would lead to the NEC becoming a permanent independent standing election administration body, one that would conduct continuous operations that would allow elections to take place at any time, whether for the National Assembly, the Senate, for local government, or for other public appointments or issues that should be put directly to the people. Further changes will be needed to consolidate this continuous role.

First of all, the NEC budget, like those for the Royal Government, the National Assembly, the Senate and the Constitutional Council, should be separate and subject to annual state budgetary approvals. The NEC's basic operations should not be dependent on applications for funding to donor countries. Second, the NEC's internal management, especially its procurement procedures, must improve so that when it does require external assistance for major capital items, the funding can be allocated directly rather than through a United Nations Trust Fund. The trust fund at present consumes 5 per cent for administration charges. The NEC must adhere strictly to its own master plan for expenditure and a policy of best value in local or foreign markets. These changes will reduce delays in ordering and acquisitions that have caused surcharges to be levied or discounts forfeited. Third, the NEC should seek to establish the principle of volunteerism when it needs to expand its workforce to 80,000 for administering elections. Elections belong to the people. Serving as a polling station clerk is serving one's fellow citizens. If Cambodia's newly elected commune councils

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work well as genuine separated legal entities from central government after February 2002, then they could take the place of the NEC's local election administrative bodies, the Commune Election Committees. This would link voter registration with the local authority's responsibility for registration of birth, deaths and marriages. The NEC and PEC (Provincial Election Committees) would then be responsible for inspecting voter registration, not conducting it.

Taken together, these changes would help Cambodia build a stronger, more efficient, capable and admired electoral administration. They would promote peaceful, free and fair elections, and thus encourage Cambodia's fledgling democracy to take wing. More mundanely, they can also help reduce the cost considerably, to below US\$1 per vote cast, i.e. well down on the nearly US\$400 per vote for elections organized by the United Nations in 1993 (although this includes all the costs of the United Nations Transitional Authority, not just election operations), and below the estimated US\$7-8 per vote for the 1998 elections and the estimated US\$3 per vote for the 2002 commune elections. In a poor country like Cambodia, the financial burden of elections must be kept within limits because of the many other pressing needs for public expenditure.

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A Brief Electoral History of Cambodia

Elections are nothing new in Cambodia, but genuinely competitive ones have been a rarity. Under Cambodia's traditional monarchies, the king was elected by a group of notables. Once chosen at the beginning of his reign, however, the king held office for life. Governance, while sometimes benevolent, was also autocratic.

During the later years of French colonial rule in the 1940s and 1950s, several elections more closely approaching modern democratic norms were conducted. The elections were contested and were arguably representative of the voters' will, resulting in national assemblies which included both a ruling party and a substantial opposition. Following Cambodian independence in 1953, King Norodom Sihanouk abdicated and, as Prince Norodom Sihanouk, became Head of State. Political power was increasingly concentrated in his hands. Political parties were abolished in favour of a single political movement, the Sangkum Reastr Niyum, usually translated as the People's Socialist Community, with Prince Sihanouk at its head. The government became more authoritarian, and elections lost their democratic character. Despite these setbacks for democracy, many older Cambodians still fondly remember Prince Sihanouk's rule as a golden era of peace and prosperity (M.A. Martin, 1994: 61-86).

By the late 1960s, Cambodia had entered a period of cataclysmic political change. The country became embroiled in the Vietnam War, its territory partially occupied by the Vietnamese Communist forces, and border areas bombed and invaded by the United States and South Vietnamese military in what British author William Shawcross described as a tragic 'sideshow' to the Vietnam War (1979). In 1970, Prince Sihanouk, while travelling abroad, was overthrown in a coup and replaced by the Khmer Republic under General Lon Nol. The Khmer Republic held its own election which, like its predecessors, was manipulated in favour of the incumbent regime. Eschewing Prince Sihanouk's determined, if ultimately futile, efforts to keep Cambodia out of the Vietnam War, Lon Nol used the army to attack the occupying Vietnamese forces head-on and was roundly beaten. His government also faced an indigenous Cambodian Communist insurgency, the Khmer Rouge, which over the next few years grew steadily stronger, took over much of the countryside, encircled the capital, Phnom Penh, and finally seized power in April 1975.

The Khmer Rouge have become infamous for the exceptional brutality of their regime, resulting in the deaths of one million or more Cambodians, one-sixth of the population, during less than four years of mad misrule. Yet even the Khmer Rouge staged an election. It was controlled by the regime and without democratic significance, serving only as domestic and international propaganda.

After a series of border clashes, the military forces of Vietnam, unified under

Communist rule since 1975, invaded Cambodia at the end of 1978 and occupied the country within a few weeks. The Vietnamese installed a Cambodian government, the People's Republic of Kampuchea, later renamed the State of Cambodia, whose leaders were mostly ex-Khmer Rouge who had fled to Vietnam during Khmer Rouge internal purges. Soviet-style national elections were conducted in 1981, with a predictable win for the ruling Communist Party against no genuine opposition. Vietnamese military forces remained in Cambodia until 1989 when the collapsing Soviet Union could no longer subsidize its client states in Vietnam and Cambodia. Throughout the Vietnamese occupation and beyond, the Cambodian government was under guerrilla attack by remnants of the Khmer Rouge and non-Communist resistance forces.

The history of Cambodia in the latter decades of the twentieth century was scarred by wars, violent regime changes, dictatorship in various guises and, at its nadir, the murderous depredations of the Khmer Rouge. As Stephen Heder (1998: 10) has noted, elections were held even under the most undemocratic governments, but they were aimed at bolstering the legitimacy of the incumbent regime and consolidating its power. Their purpose was not to give the people a free choice of government.

The United Nations-run Elections of 1993

An important break with the practice of undemocratic elections came with the elections of 1993, organized by the United Nations (UN). With the collapse of the Soviet Union's support and the pullout of the Vietnamese military, a peace agreement was forged in 1991 and signed by the four main warring factions: the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, commonly known as the Paris Peace Accords. The Agreement handed extraordinary power to the UN. In essence, the UN Transitional Authority in Cambodia (UNTAC) was to take on the temporary administration of the country under the aegis of a Supreme National Council composed of the four Cambodian factions. The UNTAC contingent ultimately grew to more than 20,000 military and civilian personnel and cost nearly US\$2 billion. The UN forces were charged, among other things, with providing for the disarmament and cantonment of the warring factions, ensuring a neutral atmosphere and conducting free and fair elections leading to a government based on the principle of liberal multi-party democracy.

In many respects, the UN was unable to exercise the power it was formally granted: the factions did not disarm, they retained their military forces, and the incumbent regime, now styled the State of Cambodia, kept control of the government administrative apparatus and often defied or circumvented UN control. The Khmer Rouge eventually withdrew from the peace settlement altogether and launched bloody guerrilla attacks against ethnic Vietnamese, the State of Cambodia, the UN and the elections (Doyle, 1995).

The crowning achievement of the UNTAC period was the elections of 1993. The Paris Peace Accords described the election scenario in some detail, requiring not only free and fair polls, but also proportional representation. It should be noted, however, that these elections were not solely, or perhaps even primarily, about the promotion of democracy. Rather, they were an integral part of the peace settlement, an agreed non-violent means for determining which of the feuding Cambodian factions would rule.

The UN election law for Cambodia prescribed a democratic election to choose a Constituent Assembly. The Constituent Assembly would in turn draft a constitution and then transform itself into a unicameral National Assembly. The Paris Peace Accords did not describe how a government would be formed on the basis of the election results, a serious failing as matters turned out.

The UN election law established a proportional representation system with 21 mostly multi-member districts. Each province or municipality constituted an electoral district. The number of legislative seats allocated to each district was proportional to its estimated population. However, six sparsely inhabited provinces and municipalities were designated as single-member districts, although several had far too few voters to justify a seat. Consequently, these districts were (and are) over-represented in the legislature. After the election, each party was to be allocated a number of National Assembly seats in each district proportional to the relative number of votes it received in that district. The seats were to be assigned to individual candidates according to a closed list for every province, which was submitted by each political party to the UN election authorities. The manner in which candidates were nominated was left up to the parties.

Many variants of proportional representation systems exist to deal with the fact that the number of votes received by a party rarely if ever translates exactly into a whole number of seats. The UN election law selected the 'greatest remainder' formula to deal with this problem. According to this system, the initial seat allocation gives to each party the whole number of seats its proportion of the vote would justify. If there are additional seats to be filled, the party whose fractional remainder is the largest receives the first unassigned seat in the district. The party with the next largest fractional remainder receives the second unassigned seat, and so forth. The greatest remainder system allocates seats in a way that favours small parties.

The elections that were held resulted in a majority for the royalist opposition party, the National United Front for an Independent, Neutral, Peaceful and Co-operative Cambodia (FUNCINPEC), with 58 seats. The Cambodian People's Party (CPP), the ruling party of the State of Cambodia, came in second with 51 seats to its surprise and chagrin; the Buddhist Liberal Democratic Party (BLDP), already split between pro- and anti-CPP factions, garnered ten seats; and the small Molinaka party won a single seat.

A grave post-election crisis ensued. The CPP refused to accept its loss, claiming that the UN election authorities had cheated it. Several provinces under CPP control briefly 'seceded' from Cambodia. Under this pressure, the parties agreed to form an interim grand coalition, with co-Prime Ministers from FUNCINPEC and the CPP. Afraid it might be excluded from future governments, the CPP then insisted on a constitutional provision requiring that any new government be approved by a two-thirds vote of the National Assembly.

The UN-conducted elections were generally praised as free and fair in an administrative and technical sense, although criticized for the atmosphere of violence and intimidation surrounding the polls. The UN instituted numerous safeguards against fraud, and the votes were correctly cast, counted and tallied, contrary to CPP claims. Safeguards included voter registration, issuance of voter identification cards with photographs, a computerized, centralized voter registry, use of locks and seals to secure ballot boxes and bags containing accountable documents, and indelible ink into which voters' fingers were dipped. The fingers were checked for the ink under ultraviolet lamps to make sure the voters had not already cast a ballot.

Balloting itself was relatively simple. After being checked against the voters' list and presenting his or her voter identification card, a voter was handed a single ballot with the names and symbols of the 20 competing parties, went to an enclosed voting booth, ticked the party of his or her choice, and then placed the folded ballot in the slot of the locked and sealed ballot box in public view.

Blame for violence and intimidation was mainly laid on the Khmer Rouge, the State of Cambodia and its affiliated party, the CPP. Many concluded from the opposition victory that CPP coercion and intimidation had failed to get the party many votes, a conclusion bolstered by the fact that over 90 per cent of eligible Cambodians registered to vote and nearly 90 per cent of registered voters went to the polls on what was seen as a cheerful, even festive occasion. Improprieties and post-election conflict were surface manifestations of a broader political dynamic at work, in which fierce political rivals, recently at war with one another, were struggling to keep or acquire power at any cost. While all parties were willing to try elections as a route to power, their commitment to the democratic election process as such was weak. The CPP, in particular, proved unwilling to relinquish power in the face of defeat. The most brilliantly designed electoral system would not likely have prevented the post-election crisis, but the lack of a specified method for forming a government gave an opening for the CPP to insist on a solution on its own terms.

The Coalition Government of 1993-1997 and the Aftermath

The coalition government had one achievement of historic importance: the final demise of the Khmer Rouge as a significant political force. In a controversial move, Second Prime Minister Hun Sen granted amnesty for various high Khmer

Rouge officials in return for the defection of thousands of Khmer Rouge fighters to the government side.

In general, however, the coalition government functioned poorly. Prince Norodom Sihanouk became King again, but as a constitutional monarch with little power. FUNCINPEC's chief, Prince Norodom Ranariddh, son of the King, became first prime minister, while Hun Sen, the head of the erstwhile State of Cambodia government, was named second prime minister. Decisions of national importance were to be agreed by the two prime ministers. Ministries were divided between FUNCINPEC and CPP ministers, with a few key ministries such as defence and the interior having co-ministers from each of the two parties. Where a minister was from one party, his senior deputy was usually from the other party. At the provincial level, governorships and deputy governorships were divided up between FUNCINPEC and the CPP in a similar fashion.

Under the coalition, the winning party, FUNCINPEC, was in reality the junior party in the government. Power-sharing was more illusion than reality, because the CPP remained in effective control of most of the armed forces, the bureaucracy within the ministries and local government throughout the country. The judiciary remained in the hands of CPP appointees. Dissatisfied with its inferior position, FUNCINPEC began to insist on a greater share of power and tried to find ways to bolster its military strength. The CPP resisted. This led to paralysis within the executive branch and the National Assembly. Armed skirmishes between military units loyal to the two parties broke out. Amid rising tensions, Prime Minister Hun Sen's forces took on and defeated the pro-FUNCINPEC military in two days of bloody battles in July 1997. Prince Ranariddh and many other important parliamentarians and political leaders opposed to the CPP fled abroad. The CPP became undisputed master of the country.

After the ouster of Ranariddh, much international aid to Cambodia was halted, Cambodia's imminent membership in ASEAN was indefinitely postponed, and the country was shorn of its UN seat. Foreign tourism and investment dried up, severely damaging the economy. Small-scale guerrilla resistance by pro-FUNCINPEC forces and Khmer Rouge remnants flared along the border with Thailand. From the international community perspective, the CPP's greatest sin was shattering the peace agreement so arduously hammered out. In the ominous atmosphere of subsequent months, most parties opposed to the CPP ceased political activity within Cambodia, because of fear, intimidation or caution. According to the UN, during and after the ouster of Prince Ranariddh about 100 people, especially senior military and intelligence officials associated with him, were killed in an apparent effort to destroy FUNCINPEC military capability (United Nations, 1998a).

All sides soon saw elections as a way out of this new Cambodian crisis. For the CPP, elections could lead to renewed foreign aid, greater international respect

and a revived economy. For the opposition parties, they could mean re-entry into political life with some international protection. For the international community, elections could restore peace and possibly put Cambodia back on the democratic path. The Hun Sen government agreed to hold free and fair National Assembly elections in 1998, in accordance with the five-year cycle prescribed by the constitution. Under intense international pressure, the government reluctantly permitted Hun Sen's archrival, Prince Ranariddh, to return to Cambodia and campaign. Nevertheless, with virtually all power concentrated in a CPP-led government and the opposition demoralized, disorganized and intimidated, the prospects for genuinely democratic elections seemed dim.

The Current Electoral System

Given the political context, the new electoral system created for the 1998 elections closely mirrored the 1993 model. The extensive technical safeguards installed by the UN experts remained in place. One small substantive change – an alteration in the formula used for seat allocation – proved to be a time bomb. After the 1998 elections, the Cambodian electoral system has continued to evolve. A second national legislative body, the Senate, has been created, and for the first time, officials below the national level are to be elected in the commune council elections of February 2002. These developments are discussed in greater detail below.

A crucial difference between 1993 and 1998 was that the 1998 elections were not conducted by the UN, but by the Cambodians themselves, albeit with extensive international funding and technical input.

The National Election Committee and Related Election Bodies

The model for election administration incorporated by the National Assembly in the December 1997 election law was an impartial National Election Committee (NEC), independent of the government, with comprehensive authority to conduct all aspects of the elections. The NEC would receive funds from the government and foreign donors, but autonomously administer its own budget. The independent NEC format was chosen after years of public debate, much of it inspired by Cambodian civic organizations and fostered by international donors.

The NEC was composed of 11 members for the 1998 elections. Its structure is defined precisely by the election law: a chairperson and vice-chairperson who are distinguished professionals; two representatives of the Ministry of the Interior; two citizens' representatives; one representative of each party in the National Assembly; and one representative elected by non-governmental organizations (NGOs). The government presents the list of proposed NEC

members to the National Assembly, whose approval is required. The major provisions of the election law, including the formal structure of the NEC, were negotiated behind the scenes by FUNCINPEC and the government. The NEC structure represents a curious mix of two principles: impartiality, as the law exhorts and as exemplified by the requirement to include various distinguished citizens and NGO members; and political balance, as reflected by the nomination of party representatives.

The NEC appoints a secretary-general to oversee the staff as well as other national-level employees, over 20 provincial and municipal election commissions, more than 1,500 commune election commissions, and tens of thousands of polling station staff, all under its supervision. The election law bans certain government officials, such as military personnel and commune chiefs, from membership of the provincial and commune election commissions, but other government officials may serve. Under the law, the NEC's election functions are nearly all-encompassing. The NEC adopts all election regulations and procedures; conducts voter, party and candidate registration; supervises the election campaign; regulates media access; organizes the actual voting and counting; investigates and adjudicates complaints; imposes civil penalties for election violations; and announces and certifies the election result.

A separate body, the Commission for the Determination of National Assembly Seats, composed of a mix of party representatives and government officials, is responsible under the law for reapportioning legislative districts, but has not yet been activated. The National Assembly itself increased the total number of seats from 120 in 1993 to 122 for the 1998 elections, through the creation of two new municipalities with one seat each.

One other institution that is key to the election process is the Constitutional Council, which, in accordance with the constitution, has responsibility for deciding disputes in National Assembly elections. The election law further defines the Constitutional Council as primarily an appeals body which rules on complaints previously heard by the NEC. The Constitutional Council is additionally charged under the constitution with deciding on the constitutionality of laws. It is composed of nine members, who must either be lawyers or possess higher-education degrees in fields such as economics, administration or diplomacy. Of these, three members are chosen by the King, three by the Supreme Council of the Magistracy (the supervisory body for judges), and three by the National Assembly. Like the NEC, the Constitutional Council is structured as an independent body.

Technical Details of the Electoral System

The 1997 election law, like the UN law, provides for universal suffrage for males and females 18 years and older. Suffrage is limited in two significant

ways. Under the provisions of the nationality law and the 1997 election law, the definition of a Khmer citizen eligible to vote is narrower than under the UNTAC election law. The apparent purpose of the restriction is to reduce the number of ethnic Vietnamese residents of Cambodia who can vote. The law requires not only that a voter be born in Cambodia, but that both of his or her parents were born in Cambodia and legally resident there. This narrow definition favoured the opposition FUNCINPEC and Sam Rainsy Party: they campaigned on anti-Vietnamese platforms as Vietnamese voters are widely assumed to be pro-CPP. On the other hand, the CPP benefited from a second restriction on the franchise. Under the UN law, a provision, largely symbolic, was made for voting abroad. Cambodians could vote in Paris, New York and Sydney if they had previously registered in Cambodia. However, the 1997 election law made no provision for voting by Cambodians overseas, many of whom oppose the CPP.

The 1997 election law retains the essence of the proportional representation system of the 1993 elections, with eight single-member districts (up from six in 1993) and 15 multiple-member ones. As in 1993, each party presents a party list of candidates for each district. Only the party name appears on the ballot, not the candidates. The National Assembly departed from the UN-prescribed proportional representation system in one small but important respect. Instead of the 'greatest remainder' formula for dealing with leftover votes, the National Assembly incorporated the 'highest average' formula, also known as the Jefferson or d'Hondt formula, in the 1997 Election Law. The 'highest average' system favours larger parties, sometimes disproportionately giving them seats at the expense of smaller parties. None of the parties raised objections to the 'highest average' system at the time it was adopted. The implications of this change were probably not clear at the time.

Political parties must register with the Ministry of the Interior, in accordance with the Political Party Law. The Political Party Law requires certain organizing documents from each party. Signatures of 4,000 party members must be submitted. The parties then register for the election with the NEC, providing similar documentation, plus a candidate list, and posting a bond of 10 million riels (roughly US\$2500), which is refundable if the party receives a specified percentage of the vote.

The 1997 election law and regulations adopted by the NEC include many technical safeguards for the security and integrity of the vote, most derived from the 1993 UN law. First, the provision for advance voter registration and issuance of voter identification cards with photographs was carried over from the 1993 elections. As in 1993, voters' rolls were compiled in 1998 on centralized computer files in order to provide a check on double registration. In order to vote, the voter's name must appear on the official list and the voter identification card must be presented. After voting, each voter's index finger is marked with

indelible ink to prevent double voting.¹

Second, an unusual feature of the 1997 election law is that votes are not counted at the polling place. Instead, ballots from all the polling places within a commune are transported to a single commune counting centre. The ballots from at least three polling places are then mixed and counted.² This departure from international norms was made at the insistence of the opposition parties, which threatened an election boycott otherwise. They considered individual polling places too insecure for counting. In addition, the opposition parties wanted to obscure the voting trends of individual polling places because the voters there might be subject to retaliation. In 1993, counting was done at the provincial level because of even greater security concerns. Some opposition leaders wanted the same in 1998 and acceded with extreme reluctance to commune-level counting.

Third, independent domestic and foreign observers and party representatives are allowed to watch all these phases of the election. Fourth, the 1997 election law limits the official election campaign to 30 days; whereas it had been six weeks under UNTAC. The election law forbids derogatory language and incitement to violence by any party or candidate. Under NEC regulations each party received five minutes on national television and five minutes on national radio per day during the campaign to present its programme. The NEC also sponsored occasional roundtable discussions with several parties.

Fifth, the election law bans bribery, intimidation and various forms of fraud, and allows the NEC to impose civil penalties such as denial of voting privileges and fines. No limitations on campaign funding are prescribed, although the NEC has the authority, so far unexercised, to check parties' accounts. No penalty of imprisonment is authorized under the election law, although criminal offences such as murder and assault, whether or not election-related, remain punishable under the criminal law.

Sixth, the 1997 election law provides extensive dispute resolution procedures, including one or more appeals. The law imposes strict time limits on submission of complaints and appeals as well as on NEC adjudication of them, as little as 48 to 72 hours. The NEC is required to hold public hearings in cases where it finds a complaint has 'reasonable grounds'. The law requires the NEC to issue a formal statement of rejection for each complaint it turns down.

Seventh, and finally, the Constitutional Council has appellate jurisdiction on all election complaints and original jurisdiction in some cases. The Constitutional Council is allowed a more leisurely 10 to 20 days under the

1. Visible dark purple ink was used in 1998 instead of clear ink as in 1993, because this required ultraviolet lamps at each polling place to check for the presence of the clear ink.
2. In 1998, counting took place on the day following voting.

election law to investigate and rule on complaints. Public hearings by the Constitutional Council are discretionary. The Constitutional Council's decisions are final; there is no court jurisdiction in election disputes.

Performance of the System: A Good System Flawed in Execution

On the surface, the 1998 elections seemed very much a replay of the 1993 polls. The technical conduct of the election was generally proficient; but the surrounding atmosphere was clouded with reports of violence, intimidation, vote-buying and other irregularities.

There was one shocking difference from 1993: the CPP won this time. The CPP secured 64 seats, a slight majority in the legislature, although it improved its percentage of the vote only slightly, from 1993's 38 per cent to 41 per cent in 1998. FUNCINPEC's percentage of the vote dropped precipitously, by almost 14 percentage points, to about 32 per cent, and it obtained only 43 seats this time, down from 58. The upstart Sam Rainsy Party, campaigning vigorously as a democratic, reformist, anti-corruption, anti-establishment party, won 15 seats with 14 per cent of the vote. The plausible explanation for the CPP victory was that the Sam Rainsy Party had drawn away many votes from FUNCINPEC. These three parties accounted for about 88 per cent of the total vote; the other 12 per cent was scattered among 36 minor parties. Only one of these approached 2 per cent of the national vote, and none received a single legislative seat (National Election Committee, 1998c).

Table 1: Election Outcomes

Parties*	1993		1998	
	Percentage	Seats	Percentage	Seats
CPP	38.23	51	41.42	64
FUNCINPEC	45.47	58	31.71	43
SRP			14.27	15
BLDP	3.81	10		
Moulinaka	1.37	1		

* CPP - Cambodian People's Party; FUNCINPEC - National United Front for an Independent, Neutral, Peaceful and Co-operative Cambodia; SRP - Sam Rainsy Party; BDLP - Buddhist Liberal Democratic Party
Source: Gallup, 2002: 168 (1993 elections) and 179 (1998 elections).

FUNCINPEC and the Sam Rainsy Party rejected the results as fraudulent, lodged more than 800 complaints, and mounted street demonstrations to protest alleged cheating and mishandling of their complaints. After weeks of escalating tension and sporadic violence, the demonstrations were put down by force. Finally, more than four months after the election, FUNCINPEC dropped its election

complaints and agreed to join in a coalition government. The new government looked much like the one that followed the 1993 polls. This time, however, only one prime minister emerged, the CPP's Hun Sen. Prince Ranariddh became president of the National Assembly. Ministries were again split and shared between FUNCINPEC and the CPP. The Sam Rainsy Party declined to join the coalition and enthusiastically took on the role of official opposition. It has remained a vocal critic of the government and both ruling parties.

Representativeness and Integration

The electoral system of 1998 (and 1993 too) should be given high marks for popular participation and representativeness. In contrast, the integrative character of the systems – the ability to promote the formation of a stable government – was poor.

The rate of participation of citizens and parties in the 1998 election was remarkably high, as it was in 1993. In 1998, over 90 per cent of the estimated voting population registered to vote and over 90 per cent of those registered actually voted (National Election Committee, 1998c; 1998a). This high rate of participation suggests that the elections of 1993 and 1998 reflected the political preferences of the public, as a whole, well or better than elections in countries where only a bare majority of eligible adults may vote. High participation was due to the enthusiasm of the voters, active voter education, the efforts of parties to get their voters to the polls and competent NEC programmes to register everyone eligible. The barriers to political party participation in the election were low, indeed perhaps too low. Twenty parties competed in the 1993 election. This figure had ballooned to 39 by 1998. The system's accessibility to many parties may seem a triumph of participatory democracy, but the sheer number of parties meant that the public was realistically familiar with only a handful. Few parties had meaningful party programmes. The requirement that each party receive equal broadcast time meant that the airwaves were cluttered with daily hours-long programmes consisting of one party spot after another. Accordingly, for the voters, an informed choice was difficult. Further, the lengthy ballot was unwieldy and confusing, especially for the many illiterate voters.

The current Cambodian electoral system is poor in terms of its integrative character or how well it promotes the creation of a stable, effective post-election government. Under the constitution, the King names a representative of the winning party to form a government. The winner is the party gaining the most parliamentary seats, whether a plurality or majority. However, the constitution requires a two-thirds majority vote of the National Assembly to confirm the new government. Neither in the 1993 nor the 1998 elections did the winning party gain that many seats. The persistent division of Cambodian society into two major political formations, one pro-CPP and one anti-CPP, each of roughly equal size, suggests that the winning party in the future will continue to be forced to form a coalition with its bitterest and strongest adversary. One can

argue that the resulting forced marriage requires enemies to work together, thus promoting peaceful coexistence, and allays the losing party's fear of exclusion, but the historical record is not encouraging. The 1993-1997 coalition was first paralysed and then destroyed because of the inability of the coalition partners to work together. After the 1998 elections Cambodia suffered nearly five months of political unrest before the two largest parties were able to come together in a coalition. It should be noted, however, that so far, the post-1998 coalition has worked somewhat more smoothly than its pre-1998 incarnation.

The Role of NGOs in Improving Electoral Quality

Formally and informally, Cambodian NGOs made substantial positive contributions to the 1998 elections. In fact, their involvement probably merits more praise and less criticism than any other participating organization. NGOs lobbied the government, parties and the NEC to initiate good election laws and practices, with some success. For example, the establishment of an independent national election committee was originally an NGO initiative. Civic organizations carried out a massive voter education programme, which reached more than one million voters in direct voter education sessions; educated even more through professionally produced radio and television shows and promotional spots; distributed hundreds of thousands of leaflets, posters and booklets; and disseminated 600,000 detailed voters' guides with information on each of the political parties' programmes.

Although outside experts differ on the effectiveness of the voter education effort conducted by the NEC and NGOs, it seems fair to say that the NGOs were critical to informing the public. Some found their activities quantitatively insufficient.³ Others, however, noted the very high rate of voter participation. In fact, voters' apparent understanding of balloting procedures was shown by little confusion at the polls and few spoiled ballots; and voters were confident that the balloting was really secret despite efforts, often by CPP officials, to insinuate otherwise (Hughes, 2001).

Another crucial NGO contribution to the election was domestic election observers. Foreign governments and international organizations provided a quite considerable 800 observers on election day, but they could cover only a small fraction of the polls. Domestic observer groups provided over 20,000 observers, blanketing almost every polling station and counting centre in the country. Moreover, two domestic observer groups undertook parallel vote tabulations, which, though incomplete, confirmed the overall accuracy of the NEC's consolidated figures. NGOs also monitored and reported on voter registration, the campaign, election-related violence and post-election dispute resolution. The NGO observer role undoubtedly deterred election mischief. It also provided a much greater degree of confidence in the quality of the voting, counting and consolidation of results than would otherwise have existed.

3. See, for example, ANFREL, 1999.

The Correctness of the Electoral Process: Success and Failures

The popular image of the 1993 and 1998 Cambodian elections is that the former were free and fair, whereas the latter were fundamentally, if not fatally, flawed, not only by violence and intimidation, but also by fraud and other misconduct by election officials. One reason for the differing perceptions is that those deemed democrats by conventional wisdom won in 1993 while the ex-Communist ruling party triumphed in 1998.

A closer look indicates that the election process unfolded in astonishingly similar ways in both years. Despite vehement denunciations by the CPP of the 1993 polls (which it lost) and condemnation by FUNCINPEC and Sam Rainsy Party of the 1998 polls (which they lost), both elections were generally well and fairly administered in a technical and organizational sense (Frieson, 1996; Gallup, 2002). Given the NEC's precarious starting point in 1998 with no staff, no equipment, no funds and no experience, its administrative accomplishment in bringing off the elections with minimal technical glitches in less than six months was considerable.

No evidence of large-scale fraud or crucial error was produced in either election, although the losing parties in both years doubted the validity of the results. The simplest explanation for their attitude is that they did not believe they could lose and resisted that harsh reality; hence the only acceptable explanation for defeat was official malfeasance or cheating. In both years, the losers took numerous small irregularities and a few documented instances of real fraud as signs of more serious, widespread misconduct lurking just out of view. Whatever the parties did not see – because they did not have 100 per cent coverage – was suspect. Other notable problems were evident in 1993 and 1998. The incumbent party enjoyed important advantages of resources, state power and media control. The incumbent was also widely accused of unfair tactics, including intimidation, violence and vote-buying.

Contrary to conventional wisdom, the NEC largely performed in a professional, technically correct and impartial way in 1998. Most of the 11 NEC members saw their task as organizing a free and fair election under severe constraints. The NEC's acceptable performance was a great surprise, since from the beginning its membership was manipulated to serve partisan ends. Under the law, only a few members were to be chosen for presumed party affiliation or sympathy; in fact, all were. While FUNCINPEC tapped three persons for membership, the CPP, through its control of the government and National Assembly, as well as questionable manoeuvres to get the NGO slot, managed to install a majority of CPP-friendly members on the panel. Only two or three of these members were CPP hard-liners. But the perception of a pro-CPP bias in the NEC counted more than the reality of its performance. The NEC would never enjoy the confidence of the opposition parties and much of the public.

Early missteps by the NEC further damaged its reputation for independence and neutrality. Under government pressure, the NEC hired a private firm to run important aspects of the election. Its reputation, once spotted, could not be restored to virgin purity even when it dropped the contract under international and domestic pressure. The opposition justifiably complained that the NEC's employees, including provincial and commune election commissions and polling station staff, were dominated by CPP members. The reasons for the imbalance were not wholly political. Government employees, especially schoolteachers, were often recruited because they were literate and organizationally competent; and most were at least nominal CPP members as a condition of their employment (Gallup, 2002). As with the NEC, official party affiliation made little actual difference in the performance of lower-level election employees. They were generally diligent and punctilious. Very few blatant attempts to manipulate the process in the CPP's favour were noted. Yet the opposition could not help believing that a biased election administration had caused or at least contributed to its defeat.

The election law required equal access to the media for all political parties during the 30-day campaign period in 1998. On this point, the NEC's efforts proved less than satisfactory. Formal media access was minimally adequate, with each party granted five minutes on national television and five minutes on national radio every day during the campaign, plus participation in occasional roundtable discussions. This precisely equal allocation of time closely followed the precedent of the UN 1993 elections, but treated with confusing even-handedness serious contenders and tiny parties with no real support. More seriously, the ruling party had enjoyed a massive advantage in news coverage since July 1997, when radio and television stations affiliated with the opposition parties were shut down. From that point, the broadcast media ignored the opposition and focused almost exclusively on the government, the CPP and its allies. This extreme imbalance prevailed both in news coverage and in political programming (United Nations, 1998a).

The NEC made a quirky effort to bring more balance to television and radio news coverage during the 30-day campaign. It banned overt political propaganda except for the five-minute slots, while allowing reporting along factual lines. The odd result was a reduction in coverage given to the government and CPP, *not* an increase in coverage of the opposition. Opposition leaders remained virtual non-persons on television and radio. The desired balance was achieved by banishing all parties from the media. In 1993, the counter to news slanted toward the incumbent had been the UN-run Radio UNTAC, which provided professional, balanced news coverage. The opposition's media disadvantage in 1998 was only partly redressed by the extensive coverage accorded it by Voice of America radio, which is widely heard and respected in Cambodia.

Newspaper coverage was more balanced than broadcast media in 1998. The

CPP, FUNCINPEC and the Sam Rainsy Party all had outlets. Yet in Cambodia, while newspapers reach an audience of tens of thousands, radio and television reach millions. Many newspapers, especially those affiliated with the Sam Rainsy Party, continued inflammatory political propaganda during the campaign, in defiance of NEC warnings. The NEC had no power to force the government to abandon its near monopoly on the broadcast media or to allow FUNCINPEC and the Sam Rainsy Party to open their own stations. Moreover, a fundamental journalistic principle in Cambodia seems to be that news outlets should report the activities of their owners and promote their interests. The NEC changed no attitudes in this regard. The imbalance in domestic media coverage may not have hurt the opposition as a whole, since it garnered an almost identical vote percentage in 1993 and 1998. However, the virtual news blackout on the Sam Rainsy Party may have greatly reduced its name recognition, which lagged far below that of CPP and FUNCINPEC. A survey conducted shortly before the 1998 elections indicated that the CPP and FUNCINPEC enjoyed high degrees of public awareness, 91 per cent and 81 per cent respectively, while the Sam Rainsy Party was known to only 30 per cent of those polled (Wirthlin Worldwide, 1998: 45).

Post-election Dispute Resolution: A Fiasco for the NEC and Constitutional Council

The post-election period was a disaster in 1998 as well as in 1993, and for similar reasons. Fortunately, in both cases a complete collapse of the election process was averted.

Part of the problem was simply the losers' unwillingness to accept defeat, and consequent determination to reject the official election process and its results. To a lesser degree, dispute resolution laws and procedures and flawed implementation may be blamed. In the 1998 elections, as to some extent in the 1993 polls, dispute resolution procedures were inadequately elaborated at election time. In 1998, the detailed procedures were written only after the election and in great haste. No dispute resolution panel was in place; it was formed four days after the election. To make things worse, the 1997 election law imposed unrealistically short deadlines for the filing of complaints and appeals and for their adjudication. The election law made no allowance for the inexperience of Cambodian political parties and election officials alike, nor for the unavoidable delays caused by the lack of communications facilities and a wretched transportation network.

Before the 1998 election, the NEC demonstrated the ability, given adequate time, to resolve election disputes to the reasonable satisfaction of all parties. In public hearings, it ruled on more than 1,000 disputes concerning voter registration. After the elections, however, the NEC was exhausted and inadequately prepared to handle the more than 800 complaints about the voting

and counting filed by the opposition parties. It did not have the staff and resources to conduct thorough investigations in the short time allowed. Some problems were solved through ad hoc personal interventions by NEC members as well as time-consuming recounts of the results in eight communes where the opposition parties suspected massive fraud. The recounts revealed no evidence of major errors. Because the recounts were not done using random probability sampling, they unfortunately provided no assurance of the validity of the count nationwide. Under pressure from the CPP to end the squabbling over the results and uphold its victory, the NEC cut the recounts short and dismissed all remaining complaints without public hearings. Like the UN in 1993, the NEC was unconvinced of the merits of the complaints and confident that its procedures and electoral watchdogs had prevented large-scale fraud.

In summarily rejecting almost all the complaints, the NEC made a technically defensible but politically disastrous mistake. The NEC's action may have been mostly within the bounds of its legal authority. The somewhat vague language in the election law suggests a rather high hurdle for complainants to get their complaints accepted for review, and higher hurdles still to get a public hearing or favourable decision: the irregularities at issue must be serious, and must affect the outcome of the election. To merit a public hearing, complaints must have 'reasonable grounds'. To prevail, a complaint presumably must have convincing evidence. Many, though not all, complaints submitted in 1998, as in 1993, were trivial, inconsequential, or unsubstantiated. The most serious confirmed charge was that election officials in many places restricted the number or location of party observers so that they could not clearly see each and every ballot as it was counted. In addition, some observer groups simply did not have enough observers on hand when counting was unexpectedly conducted simultaneously at several counting stations within a commune counting centre. Evidence was not presented that the counters had actually rigged the count, merely that the potential existed.

Politically, the NEC's peremptory rejections exacerbated the opposition's already deep-seated and emotional conviction that its election loss must be due to fraud and official bias. In the charged atmosphere, the NEC's action proved incendiary. Tension quickly mounted, the opposition massed demonstrators for weeks on end, violence against ethnic Vietnamese erupted, and the government with bloody force eventually put down the protestors. The Constitutional Council compounded the NEC's error by using minute technical deficiencies of format and alleged late submission to avoid even considering the vast majority of the opposition's appeals. The mere 17 complaints the Constitutional Council agreed to judge were all rejected, after testimony and investigation, as baseless or unsubstantiated. No public hearings were held. These decisions were not, in a legal or evidentiary sense, necessarily incorrect. But from a political perspective, the NEC and Constitutional Council chose the moment of highest tension, when the election hung in the balance, to reject the

opposition's complaints dismissively, using a rigid and exacting interpretation of the election law. A more transparent, flexible, politically astute approach might have assuaged opposition concerns about fair treatment.

The opposition parties were not without blame in the post-election period. Like the NEC, they were unprepared for handling a large number of complaints in the short time permitted by law. The parties generally failed to raise their objections properly at the polling or counting stations where the alleged infractions occurred, but instead lodged the complaints later at the provincial election commissions or directly with the NEC. Complaints were often submitted without the necessary precision or supporting evidence. In addition, there is reason to believe that the submission of a huge number of complaints was a form of civil disobedience intended to paralyse the election apparatus (Grainger, 1998: 1, 7).

Problems Arising Outside the Electoral System: Disproportionate Resources, Coercive Power

The most serious problems afflicting the 1998 elections were external to the formal electoral system. While the NEC took some measures to deal with these factors, they remained largely beyond its control. The CPP's advantages in 1998 (and 1993 as well) went far beyond the benefits of incumbency in established democracies. The CPP used state personnel and resources to campaign and gave small presents to numerous citizens who pledged to vote for them.⁴ Because of the virtual monopoly on coercive power by the ruling government and party, CPP solicitation of party membership and votes was seen by many Cambodians as inherently intimidating. Those who resisted party entreaties to imprint their thumbs or swear allegiance to the CPP were considered dissidents and sometimes subjected to ostracism or retaliation. CPP appeals for votes were at times accompanied by veiled or direct threats.

The CPP's election strategy seemed based on the notion that it was the only legitimate party; that those who disagreed were renegades; and that a good campaign method was simply rounding up voters and sending them to the polls with instructions to vote CPP. The idea of appealing to voters' desires and interests was clearly secondary in the CPP's internal campaign strategy. In short, the CPP's campaign tactics, in 1998 just as in 1993, owed much to old Communist mass organization techniques, which rely largely on expectations of obedience to unquestioned authority (Cambodian People's Party, 1997; Ledgerwood, 1996).

A perception of widespread violence perpetuated by the CPP marred the 1998 elections, but the reality was less dire. There was relatively little serious election-related violence in the run-up to the elections, according to the most careful

4. Other parties gave gifts as well, but their resources were fewer.

monitoring organization, the Cambodia Office of the High Commissioner for Human Rights (Peschoux, 1998; United Nations, 1998c). The domestic and international impression was of rampant violence, perhaps because victimized parties and human rights groups energetically publicized and denounced reported violations. The perceived atmosphere of danger may well have frightened local party activists away from campaigning in the countryside; harassment of low-level opposition party workers was documented.

One may also argue that earlier violence – the overthrow of Prince Ranariddh and targeted killings of about 100 senior FUNCINPEC military and security officials and associates in 1997 – had cast a chill over the entire election process, if only by reinforcing the impression that the CPP was willing to use force against its enemies and insistent on staying in power by any means necessary. In the months following the 1997 Ranariddh ouster, opposition activity was greatly inhibited.

Dealing directly with intimidation and violence was beyond the NEC's ken. NEC appeals to the government apparently led to the decline of some of the more coercive campaign tactics such as gathering voters to swear oaths to vote for the CPP. However, apprehension and prosecution for serious crimes of violence and intimidation were matters for the police and judiciary. The NEC imposed civil penalties in a handful of cases, but no arrests or prosecutions of election-related crimes were conducted. This inaction was nothing new in Cambodia where government or ruling party officials were suspected of criminal activity. UN Special Representatives for Human Rights in Cambodia have deplored this persistent impunity (United Nations, 1998d).

The NEC creatively employed indirect measures to curb intimidation and violence. With the Defence Ministry, it designed a competent security plan to protect the balloting and counting process. Little election-day violence was reported. The NEC conducted a publicity campaign to promote peaceful polls and to assure voters that they were free to vote according to their conscience in a genuinely secret ballot. They enlisted King Sihanouk to use his great prestige to convey these ideas through broadcasts and thousands of royal messages imprinted on posters.

The Meaning of Elections: The People's Will or a Manipulated Result?

We have contrasted the high technical quality of the Cambodian elections of 1993 and 1998 with the less satisfactory surrounding environment, in which gross inequality of resources, coercive methods and the sheer concentration of power in one political faction were all present. How does one reconcile these contradictory elements, assign the proper weight to each and arrive at a consolidated assessment? Here scholars have differed in theory as well as

practice. Their task has been complicated by the lack of accepted universal standards for judging elections (Elklit and Svensson, 1997: 43).

The quality of the 1998 Cambodian election process overall can only be described as mixed. A level playing field existed neither in 1993 nor in 1998. No domestic or international observer group called the 1998 election process as a whole 'free and fair'. The largest domestic observer group, the Committee for Free and Fair Elections (COMFREL), termed the polls 'reasonably credible', meaning the process was marred by significant improprieties but the results were deemed valid (COMFREL, 1998: Sections 1, 10). The biggest international group, the Joint International Observer Group (JIOG), which was denounced for its supposedly lavish praise of the election, used the words 'free and fair' *only* to describe what its observers saw on voting and counting days. This positive assessment of voting and counting was shared by almost all observer groups (Government of Australia Department of Foreign Affairs and Trade, 1998; International Republican Institute and National Democratic Institute for International Affairs, 1998). JIOG briefly criticized the pre-election environment. Its spokesperson, in his confidential report to the European Union, sharply faulted the handling of post-election disputes (Linder, 1998). Still, the JIOG placed more emphasis on the (positive) formal administration of the voting and counting than on the surrounding (negative) political environment and other factors (Joint International Observer Group, 1998).

The 1993 elections had been similarly mixed. Although the term 'free and fair' was bandied about by the UN and others in describing the polls, this characterization can properly be used only for the formal administration of the voting and counting. The UN followed the practice, now considered obsolete by many experts, of focusing exclusively on the formal process of voting and counting when delivering its verdict (Carothers, 1997: 22). Improprieties outside the formal process were serious. Killings and other violence were probably more severe in 1993 than in 1998. Because the opposition won, however, the effect of wrongdoing directed against them was obviously not decisive at the polls and could safely be discounted.

A cruder test of the acceptability of the 1998 elections is whether its flaws were so severe that they turned a CPP defeat into victory, rendering the overall process unacceptable and invalid as an expression of the voters' will. The losing parties and a few critics have advanced this argument, but they must go to extraordinary lengths to make their case (Morris, 1998; Sanderson and Maley, 1998: 247). The argument for the effects of subtle intimidation can be carried further. The CPP, through its control of the levers of state power, has continued to dominate Cambodian state and society. In the Cambodian context, incumbency has often been equated with legitimacy. The CPP's history of coercive authority over 20 years of rule may have led to the belief that voting against it could result in retaliation, even if the party is behaving acceptably at the moment. Caroline

Hughes (1999) has speculated that some voters may have consciously chosen the CPP although they preferred other parties because they were convinced the CPP would violently reject a defeat at the polls. Accordingly, a vote for the CPP was a vote for peace.

The effect of 'intimidation by incumbency' as described above is particularly troubling, because the incumbent need not do anything grossly wrong to win. The effect can be dispelled only by democratizing trends within the government and parties or by alternation, with ruling party and opposition trading places at the helm of government. Future opposition electoral victories remain possible, in light of the fact that FUNCINPEC and the Sam Rainsy Party collectively commanded the allegiance of more voters in the 1998 elections than did the CPP; the question of CPP acceptance of alternation is still open. The majority of commentators have looked at the evidence in a fairly direct and simple way. Because the voters were not visibly intimidated or obviously voting for financial reward, and evidence of fraud was minimal, observers mostly discounted the effects of misconduct as limited and ultimately inconsequential (Solarez, 1998). Most voters resisted CPP intimidation and blandishments: 58 per cent of all voters chose parties other than the CPP. Even huge numbers of CPP members were not loyal to the party: the CPP received a vote equal only to 53 per cent of its own claimed membership. International and local observers reported the voters' mood on election day as cheerful and festive, not fearful or oppressed. A pre-election survey by the Center for Advanced Study suggested that only a small percentage of voters would vote 'as a powerful person told them' (Center for Advanced Study, 1998). From anecdotal accounts, voters appeared to understand and believe in the secrecy of the ballot. These sorts of observations led most foreign and domestic observer groups to conclude that the voters had overcome serious pre-election flaws, particularly intimidation, to vote freely on election day (International Republican Institute and National Democratic Institute for International Affairs, 1998). They condemned misconduct, especially by the ruling party; they did not praise the election process as a whole, given its flaws; but they also did not declare the results wrong or invalid (International Republican Institute, 1999; National Democratic Institute for International Affairs, 1999).

The national margin of victory for the CPP over FUNCINPEC was approximately ten percentage points, not a small hurdle to overcome, though much smaller shifts in local vote percentages could have caused the CPP to lose its legislative majority if the provinces were chosen carefully enough. One can speculate that CPP misconduct influenced just enough voters to make a decisive difference in the outcome. But most observers rarely try to make such fine distinctions, preferring to rely on gross trends.

The current Cambodian election system has demonstrated the ability to generate elections of adequate technical quality, even if some significant improvements

are required. Yet under current political conditions, the election environment is likely to be seriously flawed. These flaws do not necessarily render the 1993, 1998 or subsequent elections meaningless or unrepresentative of the popular will. The 1993 and 1998 elections were genuinely competitive. Their outcome was not foreordained. The electoral system has not – as yet – been so manipulated or subverted that it generates a predictable or managed outcome.

Perhaps the most disturbing phenomenon in both the 1993 and 1998 elections was the notable rejection of democratic norms. The electoral mechanisms may have been reasonably fair and democratic, but the political parties either played outside the rules or refused to accept unfavourable results. This behaviour is partly attributable to the political culture among Cambodian leaders in which democracy and obedience to the legal system have lower priority than the quest for power and the struggle to defeat one's enemies.

Several reasons may be adduced for this lack of elite commitment to the electoral system, and to the democratic process as a whole. One is the absence of a long tradition of stable democracy in Cambodia. Its leaders have been accustomed to ruling autocratically, without accountability or challenge, except the kind that comes from illegitimate usurpers. Furthermore, the extreme suspicion and hostility between the major parties meant that either side saw defeat as leaving them helpless at the hands of a vengeful victorious enemy. Defeat was therefore almost unthinkable. Politics and elections, like war, were played as a zero-sum game. One might even argue that to the Cambodian factions, elections were war by other means (Gallup, 2002). A war-based political culture meant that violent, extra-legal routes to power were not precluded. The CPP ousted Prince Ranariddh by force only the year before the 1998 polls; after those elections, some opposition leaders called for forcing Hun Sen from office and invited foreign military intervention to do so (Johnson, 1998).

An additional reason for undemocratic behaviour is that the electoral system is new and relatively untested, and therefore does not yet enjoy public or elite allegiance. Both the CPP (in 1993) and opposition (in 1998) seemed to believe, once they lost, that the electoral system could easily be manipulated against them in mysterious but highly effective ways. They had no abiding faith in electoral safeguards and surmised that despite them the election authorities conspired to hand undeserved victory to their opponents.

The Limited Contribution of Elections to Cambodian Democracy

In principle, elections should contribute to the consolidation of democracy. It is therefore ironic that both of Cambodia's recent democratic elections, in 1993 and 1998, have precipitated grave crises which threatened to end Cambodia's

democratic experiment. The imminent prospect of gaining or losing power elicited undemocratic behaviour from various parties. To the parties' credit, they eventually found a solution within Cambodia's constitutional framework and did not step over the brink into rule by junta or civil war. At the same time, scholars have observed that repeated elections have failed to produce democratic consolidation (Manikas and Bjornlund, 1998). Some critics are disappointed, if not outraged, by elections that have failed to sweep the CPP from power. In their view, democracy cannot be achieved in Cambodia until the CPP, with its legacy of Communist one-party rule, is removed (Morris, 1998). Cambodia has not experienced what Huntington calls a 'founding' or breakthrough election, heralding a new democratic era (Huntington, 1991). The *ancien regime* remains in place.

Though lacking a dramatic shift from authoritarianism to democracy, Cambodia has nonetheless undergone some gradual democratizing changes since the 1993 elections. It remains an open question whether the momentum will continue toward full democracy, or whether Cambodia will become an 'illiberal democracy' as Fareed Zakaria terms it (1997). The country could even slip back into traditional authoritarian rule, although the growth of civic groups and a public increasingly supportive of democracy militate against a wholesale return to the past.

To fulfil the task of establishing a firm democracy in Cambodia more reforms have to be undertaken. Most important are additional reforms inside the system of government.

The National Assembly has been operational since 1993. So far, it has not lived up to its full potential as an active, independent legislative body, sensitive to the citizenry it represents. It has produced some exemplary legislation, such as the constitution and the 1997 election law. It has passed other laws, such as the press law, which restrict civil liberties more than is usually considered appropriate in established democracies. The number of laws passed has been relatively low, in part because the rival coalition partners who run the government have often been at loggerheads. Some legislators have also been lax: members of parliament have been chastised by their own leaders for repeatedly failing to attend sessions. A further criticism has been that legislators prefer to stay in the capital and rarely visit and consult their constituents.

To some degree, Cambodian laws encourage legislators who are passive and distant from the voters. The government, not individual parliamentarians, proposes legislation. Candidates for the National Assembly are chosen by the national party leadership. Some have been put on the party list only days before the election. As a result, voters may scarcely know who is running for office. It is not surprising that many National Assembly members feel more accountable to their party than to the constituents they represent. Also, the

parties exert strict discipline over their members. They have expelled dissident legislators from the party and the National Assembly.⁵

By constitutional amendment, the National Assembly created a second chamber, the Senate, as part of the negotiations to form a new coalition government after the 1998 polls. The purpose of the Senate was not to expand democratic representation, but to give a new home to the then-president of the National Assembly, the CPP's Chea Sim, and to make him the acting chief of state in the absence of the King. Under the un-amended constitution, that powerful position would have gone to the CPP's archrival, Prince Ranariddh, the new National Assembly president.

In its first session, the Senate was appointive. In its second session, it will be partly appointive and partly elective, though no law defining the electoral method has been passed. The Senate has the power to debate and delay legislation, but not to prevent its passage. The Senate's achievements thus far are limited, but it has been the scene of meaningful debate on some legislation. A Cambodian civic activist, Chea Vannath, has been quoted as saying that 'Instead of simply rubber-stamping legislation from the National Assembly, the Senate has several times raised legitimate questions about the constitutionality of laws' (2002).

Within the executive branch, longstanding authoritarian traditions have yet to be dispelled. Frequently, as in times past, major decisions have been made on high, sometimes secretly, and imposed with little or no debate or popular consultation. Although leaders may well have the welfare of the people in mind, little attempt is made to ascertain what the population actually wants. At lower levels of government too, officials – all of whom to date are appointed by the central government – are accustomed to enforcing orders received from above rather than responding to the wishes of the local population.

Still, a few signs of responsiveness to popular desires have surfaced. For example, Prime Minister Hun Sen's personal programme to construct more than 2,000 schools, all named after him, was undoubtedly inaugurated with an eye to a favourable reaction from voters. At the same time, the prime minister's generosity fits neatly into the tradition of public largesse followed by Cambodia's rulers through the centuries. At the behest of National Assembly President Prince Ranariddh, Prime Minister Hun Sen recently instructed ministers to attend the National Assembly in person to respond to questions; they had previously avoided any semblance of parliamentary 'question time'. This may give some sense to the government that it is responsible to the elected National Assembly.

5. The quality of the National Assembly's work may be improving through experience. Prince Ranariddh, the current National Assembly president, reportedly called the previous National Assembly (1993-1998) a 'rubber stamp', but also stated that the quality of debates has improved in the current session.

The judiciary remains composed almost exclusively of CPP appointees and is subject to political influence from the executive branch and ruling party. Accordingly, the rule of law remains weak. However, the Constitutional Council has asserted its independence from the government and National Assembly in a few cases, overturning as unconstitutional laws passed which imposed the death penalty and which required a woman as head of the Ministry of Women's Affairs.

The most striking development of democracy has taken place in the private rather than government sector. Hundreds of NGOs have sprung up in Cambodia since the beginning of the UN-sponsored transition process in 1991; a considerable number are vigorous promoters of democracy, human rights, responsible public policy and good governance. Elections have proved an important, legally sanctioned opportunity for NGOs to expand their membership and activities. They have engaged in lobbying on policy issues, provided voter education to millions of citizens and trained and dispatched tens of thousands of election observers. Similarly, Cambodia's print media have grown from a few, government-controlled outlets to dozens of newspapers. Though newspapers tend to be inflammatory, uncivil and highly partisan, they have diversified the information available to the public.

The general public's appreciation of democracy has been enhanced by the election process. Cambodia's elections of the 1990s repeatedly exposed Cambodian adults to the basic concepts of democracy. Elections gave citizens the rare chance to be consulted. Their enthusiastic participation suggests that they have welcomed the opportunity. In 1998, large numbers of Cambodians received a more intensive introduction to democracy and elections: some 70,000 poll workers, tens of thousands of party observers and campaigners, as well as the NGO activists mentioned above. In a country where public debate is often timid, the pre-election period provided a window for robust political expression. Intense discussions of parties, candidates and public policy ensued, since by law, all parties' viewpoints must be heard during the campaign.

Elections also provide a unique opportunity for foreign governments and institutions to promote democratization through activities that might be considered interference in internal affairs at other times. If a government wants respect and foreign acceptance of its elections, and foreign financial help in mounting them, it must adhere to international norms for free and fair polls. The help of the international community in the form of material support, advice and election observers was sought by all Cambodian factions in the 1998 elections.

On balance, Cambodia's recent elections have made a positive contribution to a gradual democratic evolution in Cambodia. They have not vanquished autocratic attitudes or institutions. They have produced governments chosen

by the people and ultimately accountable to them at the polls. Because they were competitive events, not sham polls, the elections of the 1990s have awakened a popular regard for democracy, which governments and political parties will ignore at their peril.

Proposals for Reform

Given the unsettled state of democracy in Cambodia, electoral system changes may lead toward democracy or away from it. The following suggested changes might strengthen electoral quality as well as democratic stability. They fall into several categories: essential reforms, correcting major flaws which impede the functioning of the election system; desirable reforms; and reforms which merit discussion. The latter may have significant drawbacks as well as important benefits. They should thus be discussed and scrutinized intensely and adopted only if a consensus for them develops.

Reforming the NEC and Constitutional Council

The NEC is the single most important institution involved in Cambodian elections. To be fully successful, it must enjoy broad respect and support across all major political factions. It must also function with a high degree of competence, independence and impartiality. The NEC's professional competence has improved through accumulated experience and the judicious use of foreign advisors. However, the NEC and its staff operate in a broader political milieu, which prizes partisanship and obedience to authority above professionalism and independence. The NEC and its staff would benefit by experiencing the electoral function in the context of established democracies, through appropriate visits, exchanges and secondments.

Continued use of foreign advisors and technical training would be advisable, though the aim should be to enable Cambodian authorities to perform all tasks themselves rather than produce long-term dependency on outside help. Foreign contacts should not be restricted to wealthy Western democracies, which may address election problems with expensive technological solutions, but also include democratic states such as India, where problems of financing, transportation, communication, organization and literacy, comparable to Cambodia's, are encountered.

Even with better professional skills, building greater confidence in the NEC is essential. It was the lack of such confidence that helped precipitate the dangerous confrontations which followed the 1998 elections. The NEC came under intense criticism because it was perceived (if not entirely accurately) as a partisan body. Several steps can be taken in this direction. The best single solution would be to reconstitute the NEC so that its membership as a whole is acceptable to all major factions. There is no set formula for doing this; negotiation would

be required. Ideally, the NEC would be composed exclusively of non-partisan members of great distinction and integrity agreeable to all factions.

Achieving a completely non-partisan NEC might be difficult, because in Cambodia's polarized society, even outwardly non-partisan officials are suspected of being secret supporters of one party or another. Some combination of partisan and non-partisan members, as long as they are collectively agreeable to all sides, would be acceptable. This solution would require a careful balance between sympathizers of opposing parties. Choosing all members for political moderation, fairness and negotiating skills would go far toward improving NEC operating dynamics and increasing public faith.

To some degree, moves in this direction have already been taken. Before the 1998 election, the NEC's membership was seen as being tilted as much as eight to three in favour of the CPP. Near the 2002 commune elections, FUNCINPEC and the Sam Rainsy Party named NEC representatives who reflected their parties' views; the presumed pro-CPP majority in the NEC dwindled to six to five at most. Some of those deemed CPP are non-ideological moderates. Even some of the NEC members who saw their duty as zealously defending their party's interests in 1998 have subsequently seen virtue in compromise. More could be done to depoliticize the NEC without endangering the vital interests of any party.

The NEC headquarters staff, the provincial and commune election commissions, likewise suffer from perceived pro-CPP bias. They should be reconstituted to command broader acceptance. The NEC should ensure that its recruitment is transparent and that employees meet appropriate civil service standards of neutrality and professionalism. At the level of provincial and commune election commissions and polling station staff, the NEC should strive harder to appoint impartial members, or at least remove those who are blatantly partisan. The same standards of general acceptability, impartiality, moderation and fairness used for the NEC should be applied to these bodies.

The question of the NEC's independence also needs to be addressed. On certain issues it has evinced vulnerability to government or CPP pressure. Perhaps this susceptibility cannot be wholly eliminated in an environment in which state power, including the use of force, is overwhelmingly concentrated in the hands of the CPP, there is no important countervailing authority and the law provides little protection.

The NEC's independence (and effectiveness) might be enhanced by changing the term of appointment of NEC members. The election law implies, somewhat hazily, that NEC members have a five-year term starting at least nine months before each national election. In fact, several changes have already been made since 1998 to reflect the changes in party membership in the National Assembly.

Apparently, then, members actually serve at the pleasure of the government and National Assembly. The law also seems to assign the organization of each national election to a panel of complete newcomers installed only nine months previously. These inexperienced officials then linger in office for four more years of relative inactivity after the election until replaced shortly before the next election by more novices. This seems an odd way to ensure that the NEC is competent and experienced at election time. A more effective method would be to appoint members to a longer fixed term, and perhaps stagger the appointments. For example, the Constitutional Council members serve nine-year staggered terms; the terms of three members expire every three years. A longer fixed term would help insulate the NEC from direct political pressure, while staggering the terms would ensure continuity. Of course, a long fixed term will require special care in making appointments, since a member who proves incompetent or biased would remain in office for many years. Special rules might be required for appointment of political party representatives to ensure that each party currently in the legislature is also represented in the NEC.

A further desirable change would be to reduce the NEC membership from nearly a dozen members to a smaller group, perhaps five. The larger body has proved unwieldy and fractious. As a result, endless debates have ensued on issues requiring prompt action.

A key NEC procedural reform to increase confidence in the integrity of the election process would be to ensure sufficient party observers with a clear view of the counting, so that each ballot can be scrutinized by each party as it is counted. A complete parallel vote count should be facilitated. The consolidation of results must take place in a transparent and orderly fashion, making the process easy to verify for parties and other observers. Similarly, the signed results for each counting centre should be promptly and publicly posted, as required by law but often neglected in the 1998 polls. Lapses in these areas fed losers' doubts about the 1993 and 1998 polls. If parties can see everything and check everything for themselves, they should be reassured about the honesty of the process.

Improved Dispute Resolution

Dispute resolution was disastrous in the 1998 elections. Improvements are consequently essential. The election law and procedures should permit more time for filing and adjudication of complaints. In addition, the law should foresee the possibility of prolonged disputes and specify how a government may continue to function while final resolution is still pending. Possible scenarios would include keeping the existing government and National Assembly in office temporarily with full powers, forming a caretaker government, or creating an interim government reflecting the provisional

election results. Such revisions might reduce the confusion and uncertainty which attended the NEC's inability to deal thoroughly and in a timely fashion with the deluge of complaints received after the 1998 elections.

The procedures for dispute resolution, for both the NEC and Constitutional Council, need to be more clearly laid out in writing and widely publicized before the next election. Standards for accepting complaints, for holding hearings and for finding for or against complainants should be unambiguous and well understood. One or more seminars for political parties, the media and NGOs on the precise requirements for submission of complaints should be conducted in advance of the elections. The NEC needs to make sure that its rejections of complaints are in proper form legally, so that the Constitutional Council cannot use NEC errors as excuses not to hear appeals, as it did in 1998.

The NEC and Constitutional Council need to devote additional resources and staff to dispute resolution so that they are not overwhelmed if large numbers of complaints are filed. Both the NEC and Constitutional Council should hold public hearings, preferably televised, on momentous issues, even if they feel they do not strictly merit a hearing. Fair and open hearings may go far towards meeting complainants' concerns that their complaints are being given due consideration.

The weaknesses in pursuing election violations, especially serious incidents of intimidation and violence, can ultimately only be remedied by a neutral police force and independent judiciary, unafraid to tackle crimes committed even by the powerful. Pending a general judicial reform, the NEC could expand its investigative staff and include in it a seconded police detachment with the authority to investigate and arrest those culpable of criminal offences related to elections. The regular courts, with their history of poor performance in political cases, would still adjudicate these criminal infractions, unless the government were willing to establish a special election crimes court, an intriguing option but not a very likely prospect. But more aggressive investigation and apprehension of suspects should still deter violations.

Improving Public Confidence in the Constitutional Council

The Constitutional Council faces the same crisis of public confidence as the NEC because of perceived partisanship and lack of independence. The legal framework for appointing members currently facilitates a CPP slant. As with the NEC, the appointing authorities should go beyond the minimum legal requirements by striving for a collective membership which is broadly respected for its non-partisan professionalism and legal acumen. If a purely non-partisan panel is unrealistic, a politically balanced membership comprising distinguished jurists of moderate views should be ensured. The objective is to produce a council universally respected for fairness and integrity. Revising the composition of the NEC and Constitutional Council to emphasize impartiality

would be difficult, since it goes against the basic political instinct to exert control through partisan appointments. Yet party leaders may be open to the argument that independent, non-partisan election bodies are preferable for protecting their interests over the long term, especially on those occasions when they may find themselves out of power.

The Constitutional Council's legal expertise should be reinforced. The constitution permits members to be selected from among persons with higher education degrees in law, administration, economics, or diplomacy. In reality, the Constitutional Council's work is deciding complicated legal and constitutional issues. While other areas of expertise can be useful, all, or at least the vast majority, of Constitutional Council members should be eminent lawyers or judges. At present, applying this standard is problematical since few of Cambodia's lawyers survived the terror of the Khmer Rouge years. Only recently has the university's Faculty of Law begun to graduate new attorneys. Over time, however, it should become easier to fill all the council posts with distinguished members of the legal profession.

Like the NEC, many Constitutional Council members have had little or no familiarity with the practice of law in a democratic environment. (The vision of the law in Cambodia's Communist past was obedience to the dictates of the party.) Foreign visits, exchanges and secondments for council members and staff would be highly desirable, both to improve technical and administrative expertise and to expose members to judicial work in free societies where the rule of law prevails.

Constitutional Changes to Improve Cabinet Stability

The proportional representation system adopted by Cambodia represents voter preferences accurately enough, though a clear choice among variants must be consciously made. The system's integrative function requires improvement. A major reform would be to reduce the two-thirds majority vote in the National Assembly required for confirmation of a new government to a simple majority. The two-thirds requirement has forced Cambodia's two main political groupings, bitter rivals, into two coalition governments. The formation of the coalition was prolonged and violent both in 1993 and 1998. The first coalition functioned poorly and ended disastrously. Moreover, the interlacing of officials from the two parties throughout the ministries and governorships has made it difficult for voters to hold the parties individually accountable. The coalition also produces an overwhelming government majority which may contribute to hubris and a tendency toward diarchy, with potential rivals marginalized. A simple majority vote of confidence in the National Assembly would make it easier for the winning party to form a new government and to govern in accordance with its principles. The government would not be paralysed by disputes between hostile, feuding factions. The ruling party could easily be held responsible for its policies by voters. A narrower majority might also

strengthen the hand of individual members, whose votes would have more value.

However, governments based on a simple majority vote also have drawbacks. With Cambodia's weak judicial system and the absence of any competing power to counterbalance that of the executive branch, the loser in an electoral contest may reasonably fear persecution. In any event, exclusion from government deprives the loser of many benefits: power, patronage, resources and prestige. Some will fear that a simple majority rule would give the CPP a permanent legislative majority and thus a perpetual hold on power. The result could be a return to unaccountable one-party rule. Dropping the two-thirds requirement is a profoundly political, not just technical, issue. Hence it should be subject to careful analysis and a full public debate to determine whether it should be approved or not.

Improving Electoral Proportionality

Proportional representation appears to be generally acceptable to all Cambodian factions. Yet it was the minor issue of which precise variant to use which provoked civil strife in the 1998 polls.

In the 1997 election law, the National Assembly evidently intended to adopt the 'highest average' or Jefferson/d'Hondt system. In drafting the electoral regulations, the NEC and its experts mistakenly wrote down a slightly different formula known as the 'quota method' of Dr Michel Balinski and Dr H. Peyton Young, first published in the *American Mathematical Monthly* in 1975 (Balinski and Young, 1975: 701-730). This quota method eliminates d'Hondt's advantage to larger parties and comes closer to true proportionality. The NEC caught its error and reinserted the highest average system in its final published regulations. No particular publicity was given to the correction. Various parties and NGOs used the quota method after the elections to calculate the seats to be allocated to each political party. Only then was it realized that two methods, yielding different results, were being used, one by the NEC, the other by the opposition parties. Under the quota method, the CPP would have lost seats and its legislative majority. Unsurprisingly, the opposition insisted that the quota method was the best and only legal allocation formula and must be applied. The use of the Jefferson/d'Hondt system became a central opposition grievance.

In fact, both the d'Hondt system and the quota method have disadvantages. D'Hondt can result in a party receiving considerably more or fewer seats than its strict percentage of the vote would justify. It often 'violates quota' in technical terms. The quota method does not violate quota, but suffers from the 'population paradox'. For example, a party may increase its vote from one election to the next, while another party loses votes, yet the former may lose seats to the latter. This is why Balinski and Young have not advocated the quota method since

1980 (Young, 2001). The quota method's drawback and its obscurity – it goes unmentioned in almost all standard texts and has apparently never been used in any election – make it exceedingly improbable that any Cambodian authorities ever intended to adopt it (P. Martin, 1994; Cotteret and Emeri, 1994; Gaughhofer, 1988).

The formula episode shows how an atmosphere of poisonous distrust can turn a minor mistake into a grave political crisis. In the future, the election ground rules must be clearly understood and accepted by all major parties before the elections. Extraordinary transparency is required.

For Cambodia's next national election, d'Hondt, which is the most widely used proportional representation method (Lijphart, 1995), the quota method, or another formula such as St Lague could be used. The most important thing is that all parties understand the characteristics of each and agree on the formula. St Lague is favourably regarded by Balinski and Young. While no system can possess all desired features simultaneously, St Lague is generally more satisfactory than d'Hondt and the quota method. Alternatively, Cambodia could revert to the UN 'greatest remainder' system. Basing proportional representation on the votes received by each party nationally rather than provincially (as in the current system) would also tend to bring the National Assembly seat allocations closer to the national vote percentages.

Finally, eliminating the single-member districts (by combining them with other districts) would decrease the disproportionate representation that some of these districts currently receive. However, the CPP, noticing that it swept all but one of the one-seat districts in 1998, may be reluctant to change the status quo.

Focusing the System on Viable Parties and Introducing Barriers to Entry and Media Access

The National Assembly should debate whether the barriers are too low for the participation of parties and candidates in national elections. The cacophony of the 39 parties competing in 1998 necessarily limited the attention given to serious contenders. Several mechanisms for reducing the number of competing parties might be considered, such as increasing the registration fee, increasing the number of signatures required per party to above the current 4,000, or excluding from the next ballot established parties who fell below a small predetermined percentage of the vote in the last election. Such measures might induce like-minded parties to combine and hopeless would-be political leaders to abandon their ego-driven efforts to achieve personal glory. It is also possible that the field of parties may naturally decline over time for the same reasons: only eight parties are contesting the 2002 commune elections. Restricting the number of parties could also be misused to eliminate political rivals. Accordingly, such measures should not be imposed lightly, but be thoroughly debated and decided open-mindedly.

In a related vein, the government and the NEC should consider ways to improve broadcast media access for the major parties, whose campaign messages on television and radio in 1998 were almost drowned amongst the 36 other parties which won not a single legislative seat (United Nations, 1998a). The election law should be revised to permit major parties more broadcast time than minor ones, or at least more prominent placement, e.g. several half-hour prime time programmes devoted to the top parties. The qualification for bonus time or placement could be the percentage of votes or legislative seats won in the previous election or the number of districts in which the party is competing (only a few parties proposed candidates in all election districts in 1998). This would focus voter attention on the more viable parties and reduce the information overload from numerous minor political groups. A method equally agreeable to all parties is probably not achievable, since small and large parties' interests are diametrically opposed.⁶

In 1998, especially before the official campaign, domestic news broadcasts were dominated by government officials, usually CPP, and allied personalities, to the virtual exclusion of opposition figures and opinions. Although it has resisted mightily in the past, the Cambodian government should facilitate the acquisition of radio and television stations by independent owners, including those affiliated with other political parties. Journalists should be inculcated in the ethics of modern professional news reporting, which emphasize balance and objectivity. Over the long term, the establishment of an independent national broadcast service along the lines of the British Broadcasting Corporation or the United States' Public Broadcasting System could foster non-partisan news coverage fair to major parties.

Making the National Assembly More Responsive to Voters

The responsiveness of National Assembly members to the public they represent could be enhanced by changes in legislation or practice. One simple measure would be for the NEC to insist that the party list of candidates for each constituency be finalized and publicized long before the elections, rather than just a few days before polling, as happened in the 1998 election.⁷ Voters would be more familiar with the individual candidates and better able to judge them on their merits. Successful candidates would have a greater sense that they were consciously chosen by voters, not just by their party.

A more dramatic, long-term reform might be to require that parties' selection of candidates be accomplished through a transparent and participatory process such as provincial or national primaries or party conventions. Party inner

6. The electorate might better absorb political programming if the period for campaign broadcasting were lengthened from 30 to 60 days (or another reasonable figure) and the blocks of time set aside for political messages were broken up into shorter, more digestible periods than the hours-long marathons which prevailed in 1998.
7. The unenforced law requires 90 days advance notice.

circles might well resist the dilution of their powers this implies.

A complementary move would be to prohibit the questionable practice whereby expulsion of a National Assembly (or Senate) member from his or her party automatically results in expulsion from the legislature. This practice has been used to eliminate dissidents from both houses, and to strengthen the already firm grasp that parties have on their parliamentary representatives. The growth of both legislative chambers into independent deliberative institutions, not mere instruments of the party leadership, would foster these august bodies' own contributions to law and national policy. A different sort of measure, not related to the electoral system per se, would be for the National Assembly to require (and fund) regular public consultations between National Assembly members and their constituents in their home provinces. This would increase legislative accountability.

A final, general note might be made on how legislative and regulatory reforms might best be achieved. Given the deep divisions and profound distrust between Cambodia's political factions, significant electoral system changes should be made on the basis of consensus between all major parties, including the Sam Rainsy Party. The CPP (or CPP and FUNCINPEC as coalition partners) may well have the National Assembly majority needed to impose new laws, even over the vocal objections of other parties. But failure to achieve general agreement may lead the other parties to reject the changes and the electoral system as stacked against them. An example: the 1997 election law reflected a broad consensus, and was serviceable in almost all respects; the actual membership of the NEC was imposed despite vocal objections from the opposition, and hence that body and its decisions were discredited in their eyes from the beginning. Furthermore, numerous major changes should probably not be made all at once in order to ensure continuity and stability in the electoral system. The efficacy of a few important changes can be tested before Cambodia goes on to other reforms.

Reforms Currently Underway – the Senate and Commune Elections

Cambodia's electoral system is still evolving. Two major changes are in process. The first is the creation of a Senate. Final legislation on senatorial elections should preferably make the elected membership a strong majority, and the idea of 'sectoral elections' would best be abandoned in favour of a more representative and less easily manipulated formula for genuine popular vote. If appointed members continue, they should be picked on the basis of disinterested and distinguished public service. Cambodia does not need a legislative body whose membership simply perpetuates in another forum the pre-existing domination of one or more political parties.

A reform of potentially enormous ramifications is the election of commune councils in February 2002. This is intended to bring representative democracy to the local level by giving voters the chance to elect responsive commune officials. Up to now, commune chiefs, the administrative heads of each commune, have reported solely to the central government, not to the local population. Many were appointed by the Vietnamese-backed government immediately after the ouster of the Khmer Rouge in 1979. Unsurprisingly, some commune chiefs have been notorious for iron-fisted control of the persons under their jurisdiction, or for other misdeeds, since they have been secure and unchallenged in their fiefdoms.

The commune elections will elect commune councils of five to 11 members by party list proportional representation. The candidate at the top of the list of the party which garners the largest number of votes will be the commune chief or chief administrator of the commune, as well as the presiding officer of the commune council. The commune chief's deputy will, with some exceptions, be the candidate at the top of the list of the party with the second-highest number of votes. In practice, this means that commune chiefs and their top deputies will likely come in pairs consisting of one CPP and one FUNCINPEC member, or vice versa. This mirrors the sharing of positions within ministries and governorships under the existing coalition agreement, with the same virtues and shortcomings.

A preliminary status report on the commune elections gives reason for modest optimism amidst familiar problems. As with the national elections, voters choose a party; candidates appear on party lists, not on the ballot. In total eight parties are standing, a welcome reduction from the 39 parties in the 1998 elections, although one, the Khmer Women's Party, is only standing in one of the communes. Only the big three parties, CPP, FUNCINPEC and the Sam Rainsy Party, are fielding candidates in all or virtually all communes. The total number of candidates listed by all parties for what will eventually be 12,000 or so council seats is 75,244, of which 12,055 are women.

Overall voter registration for the commune polls, at 83.04 per cent, is down by about 10 per cent from the 1998 figure. This may be partly due to CPP efforts to discourage opposition sympathizers from registering. Another factor may be that local government generally attracts less public participation than national elections.

The NEC has been somewhat accommodating to opposition complaints about low registration figures by extending registration time in certain areas where serious errors had been committed, such as offices being closed during hours when they should have been open, or registration being denied to people still in the queue when closing hour was reached. The NEC also made changes that allowed workers and serving security personnel to register where they worked,

not just in their home areas, a problem recognized but not addressed in the 1998 elections. They also urged employers to give workers time off to register, and requested government support for this. Many garment factory employers did in fact do this. The NEC abandoned early efforts to control the content of NGO voter education materials.

To a degree, commune council elections are a daring experiment from the CPP perspective; the party will certainly lose some of the 100 per cent control it now maintains over local administration. The real success of the elections will be the extent to which they promote local government responsiveness to citizens. If the previous system of rigidly centralized, top-down governance prevails, local officials will likely remain the enforcers of central government dictates, perhaps different from their predecessors in style but not in substance. Real devolution of power and resources to the local level will be necessary to make democracy work at the grass roots. If the commune council election experiment is successful, the Cambodian government might consider whether elections at higher levels, such as district chief and provincial governor, are also warranted, reflecting the practice in established democracies of elections at many levels.

Past and Potential Contributions of Foreign Organizations to the Cambodian Electoral System

In the 1990s, Cambodia enjoyed exceptional international community support for the creation of a new democratic electoral system. In 1993, the UN designed and implemented the electoral system, which, with some modifications, remains in place today. Many Cambodian employees of the UN received on-the-job training in electoral operations. Unfortunately, the UN did not leave behind the operational documentation and massive voter education materials that would have helped guide Cambodian election authorities in the next elections.

The international community participated in but did not control the 1998 election process. It provided about US\$26 million in funding, services and equipment, supplied technical advisors, sent international observers and supported the voter education and election monitoring projects of NGOs. The international community's signal contribution was to the technical quality of the polls. Individual countries as well as collective international groupings such as Friends of Cambodia and the ASEAN Troika used diplomatic means, including demarches, negotiation, direct pressure and leverage to make the 1998 elections as free and fair as possible. These diplomatic efforts enjoyed mixed results in comparison to the success of technical advice and assistance.

The UN was prominently involved in the 1998 elections. It agreed to co-ordinate foreign election observers. The Secretary-General's Personal Representative for Cambodia used his good offices to help resolve election disagreements between

the government, the NEC and opposition parties. The UN Development Program co-ordinated foreign assistance for the election, establishing a trust fund for international contributions. The Cambodia Office of the UN High Commissioner for Human Rights and the Secretary General's Special Representative for Human Rights in Cambodia deserve special mention. Through their many authoritative reports and statements on election-related violence and similar topics, they highlighted shortcomings in the election process and pressed for remedial action.

A long list of other foreign governments, institutes and NGOs supported the 1998 elections in various ways. Among other activities, the Friedrich Ebert Stiftung, with its local partner, the Cambodian Institute for Cooperation and Peace, jointly organized a conference entitled 'National Elections: Experiences and Expectations in Cambodia and ASEAN'. The proceedings were published as a book. The Konrad Adenauer Foundation produced thousands of educational booklets on various aspects of the elections. The Canadian International Development Agency sponsored a programme to train provincial election committees in conflict resolution. Canada also provided essential technical assistance in drafting laws, regulations and procedures. The Asia Foundation was the largest single funder of domestic NGO election monitoring and voter education as well as instruction for thousands of Cambodians with election security responsibilities. The International Republican Institute trained political parties, and in particular, their election observers. The National Democratic Institute for International Affairs supported non-partisan domestic election monitoring organizations. Australia provided experts and financing to refurbish and operate the computerized voter registration system. Sweden strongly supported Cambodian NGOs.

In general the foreign efforts were complementary. The United States government declined to support election operations directly, but provided substantial aid to local and international observers, voter education and UN election security monitors. Japan and the European Union, in contrast, gave millions of dollars for the NEC, election equipment and materials, as well as provided experts. In 1998, occasional clashes between 'duelling experts' from different foreign organizations interfered at times with smooth operations.

The successes and failures of foreign intervention in the 1998 elections yield clues as to useful strategies for future interventions. In 1998, foreign donors achieved their highest rate of success in providing technical assistance in the form of election advisors and concrete aid such as secure ballot boxes, photo identification cards for registering voters and tamper-resistant documents. Election authorities welcomed this form of involvement. This foreign role was central to the creation of an electoral system that met high technical standards. Foreign organizations also sponsored public discussions of key election issues in the pre-election phase. Several public seminars, run or financed by foreign

organizations with local NGOs, sometimes with foreign experts, raised important election law issues in the years preceding the 1998 polls. These seminars helped form a broad political consensus among NGOs, political parties and the government to establish an independent national election committee to run the 1998 elections. Similarly, a public meeting on the code of conduct for election observers helped the NEC design rules that were acceptable to all factions.

A more difficult situation arises when a particular electoral reform has already become the subject of antagonism among political parties. Changing minds under such circumstances is problematic, and those who try may be dismissed as partisans, even enemies. In the 1998 elections, such issues typically arose too suddenly or too belatedly to be the subject of leisurely public consideration. Accordingly, diplomatic or political pressure was brought to bear, with mixed results. The international community had considerable leverage in 1998, because it underwrote most of the cost of the elections and held out the prospect of restored international aid, ASEAN membership and Cambodia's seat in the United Nations predicated on successful elections. Much less leverage may be available in the future.

Several successful diplomatic interventions were made. The international community insisted that Prince Ranariddh and other opposition leaders be permitted to return to Cambodia and take part in the elections. It joined in successful efforts to move the counting of votes from polling station to commune. Just prior to election day, the elections were faced by tens of thousands of untrained Cambodian election observers of doubtful credentials, apparently recruited by CPP sympathizers, who could have crowded out legitimate non-partisan domestic monitors. Strong demarches were made, including one from the Joint International Observer Group threatening not to find the elections free and fair if the problem was not resolved. The *faux* observers were banned (United States Embassy, Phnom Penh, 1998).

On other issues, such as the composition of the NEC and other election bodies, ensuring media access and preventing election-related violence, the international community expressed its concern but was unable to get full satisfaction. The international community did not engage itself vigorously on the disputed composition of the NEC, in part because it did not foresee a serious practical problem, in part out of a fastidious reluctance to interfere with the formal constitutional act of the legislature in approving the NEC membership. A brief attempt by the European Union to enforce non-political provincial election commission membership by withholding funding was angrily rejected by some NEC members who perceived it as an assault on Khmer sovereignty.

The international community was not of one mind on the importance of media access for the opposition and balanced news broadcast coverage. Some foreign

officials, such as the UN Secretary General's Special Representative for Human Rights in Cambodia, were deeply concerned by pre-election violence. At the same time, the Philippine Foreign Minister, Domingo Siazon, expressed understanding for a certain level of violence, citing the numerous election-related murders that typify elections in the Philippines (*Cambodia Daily Weekly Review*, 1998: 4-5).

The most serious lapse by the international community was its lack of preparedness for the contentious disputes and the civil disorder that followed the 26 July 1998 elections. Foreign diplomats were not impressed by the opposition's objections, but assumed that adequate dispute resolution would take place and that the losers would eventually, if grudgingly, accept the results. Instead, over many weeks, positions hardened and tensions grew. Generic international appeals for calm failed and violence erupted. Only a few foreign governments and domestic and foreign NGOs urged more serious consideration of opposition complaints. The absence of international unity, determination and an agreed plan of action led to a poor outcome. Had the international community jointly and tenaciously pressed for a specific solution and 'read the Riot Act' to the NEC, the government *and* the opposition, the post-election crisis might have been averted or minimized.

Based on the 1998 example, prospects for success of direct political pressure are greater if interventions are early, the international community is unified and insistent, the problem is clearly defined, the proposed remedy is specific and the authorities can implement it readily. Concrete leverage may also serve as an inducement, although threats can be counterproductive if they are seen as extortionate.

Conclusion

Cambodia's political system remains in flux. Democracy is not yet firmly implanted. The behaviour of political elites is often conditioned by the violent decades-long struggle for power between enemy factions. For many, the measure of political success is the acquisition, consolidation, maintenance and expansion of power, not the democratic quality of government or its ability to meet people's needs. Cambodia's current electoral system provides a serviceable non-violent mechanism to decide who governs, but Cambodian politicians have so far been reluctant to subordinate their perceived vital interests to it. Given the political culture, the stabilizing and democratizing functions of elections have yet to be demonstrated conclusively. Because of the new and relatively untested character of Cambodia's electoral system, it has not acquired the character of a sacred institution, a respected traditional authority. Nor has it become the reliable instrument of a particular party in its quest for power.

The lack of a firm, generalized commitment to the electoral system has both good and bad implications. The electoral system is not strongly respected, and so it has been unable to contain and manage political disagreements which have often exploded outside the law. On the positive side, the electoral system is open to improvement. Yet changes in the electoral system could turn it into a less, rather than more, democratic institution. Elections stage-managed to keep a particular party or parties in power have one virtue: they can be tranquil, if only because uncompetitive elections are not worth fighting over. The other path to peaceful elections is to build respect for the electoral system. Legal and structural reforms can contribute to this goal; electoral reforms of a formal nature – changes in Cambodian laws, regulations and structures – can help make Cambodian elections more broadly accepted and thus less volatile and crisis-prone. The following reform measures are particularly important:

1. The most essential reform is to reinforce the independence, non-partisanship and professionalism of the NEC and Constitutional Council. If these institutions are fair and seen as such by all sectors, then the electoral process and its results will be more acceptable to all political elements. More explicit, generous and transparent dispute resolution will increase trust in the election process.
2. If the requirement for approval of a new government is dropped from two thirds to a simple majority, this may reduce the need for contentious coalition negotiations among bitter rivals and hence make the transition to the new government smoother.
3. The present electoral system gives adequate representation to different currents in Cambodian politics; indeed the barriers to participation of extremely minor political parties may be too low. Almost any proportional representation system will do, provided it is agreed by consensus among major parties. The St Lague formula is among the best options.
4. Holding elections at the commune and perhaps other levels has the potential of extending democracy to the daily life of average citizens. A large majority of Cambodians are rural farmers whose horizon rarely reaches beyond the commune government. Local elections need to be combined with the genuine decentralization of power and resources if democratization is to be meaningful.
5. The responsiveness of the National Assembly and Senate to the voters can also be improved through legal changes to make members of both houses better known and accountable to the citizens. For the Senate, the new election law should emphasize genuine elective members rather than appointive ones; care should be taken to fashion an independent deliberative body, not a mere appendage of the executive.

What are the prospects for these reforms? Incremental technical reforms are entirely feasible, since they do not directly challenge the vital interests of those

in power. Indeed, some prominent senior Cambodian officials seem deeply interested in the concepts of good governance and reform. Reform is also favoured by the activists of Cambodian civil society. However, reforms which may directly undermine party or government authority and control are problematical. Renouncing the disproportionate resources available to governing parties, promoting separation of powers and an independent judiciary, eliminating coercive campaign techniques and abandoning the broadcast media monopoly will all be very unattractive for those in power. No political will to make such daring reforms is evident. No obvious solution presents itself. The diffusion of democratic values among key sectors and a consequent general public demand for more democratic practices may be necessary to effect change.

Where the force of the law is tenuous at best, as in Cambodia, paper reforms may be meaningless if not backed up by the will to implement them. The search for reforms must therefore look beyond formal measures to the question of political culture. Fundamental beliefs may be changed, over time, through education, both formal and informal. Cambodia has made a start among schoolchildren with its social science curriculum, which gives some – but still too little – attention to human rights and democracy, based on pioneering work by local NGOs. Informal human rights and democracy education for adults is being carried out, though on a limited scale, by Cambodian civic organizations. The students have included Khmer Rouge defectors, military personnel, government officials at all levels, rural women and other groups. The broadcast media should be consciously employed by the government to promote democratic values, beyond the limited time now accorded to NGOs.

Cambodia's political leaders often seem less receptive to democratic ideals and practices than average citizens. To be sure, an educated public thirsting for democracy cannot be totally ignored by Cambodia's politicians. Officials of high status are unlikely to sit down like schoolchildren to be instructed in democracy when their life experience has taught them a brutal *Realpolitik* based on the utility of raw power. However, this does not mean they are closed to new ideas or unable to learn. Some wish not only to govern, but also to govern well, an ideal long praised in Cambodian history and Buddhist tradition.

The key is to demonstrate to the leadership that democracy is a more successful form of governance than autocracy, a boon to leaders as well as to the general population. The promotion of ongoing, substantial contacts between Cambodia's rulers and foreign democratic figures of stature would give Cambodia's rulers direct experience with the most knowledgeable practitioners of the art of governance. Distinguished current and past heads of government would have the status and prestige to speak directly and authoritatively to Cambodia's leaders.

Finally, the extreme hostility which prevails between Cambodia's political factions must be neutralized. Their vision of Cambodia's future must grow to encompass the peaceful co-existence of different parties and philosophies, not merely the triumph of their side and the defeat and destruction of their adversary. *Feindbilder* must be broken down. Peace- and confidence-building activities should be conducted between rival groups. The transition from enemies to friendly rivals will take time and effort, but animosities among the Cambodian factions are not as entrenched as those between Israelis and Palestinians, for instance. In a governmental context, the concepts of loyal opposition, government-in-waiting, co-operation between winners and losers, and honourable retirement from politics need to replace the prevalent war-based idea that power must be held on to at all cost and no quarter may be given to the enemy.

Foreign organizations may make a difference to the survival of Cambodian democracy. Foreign organizations, governmental and non-governmental, can continue to play important positive roles in the development of Cambodian democracy. The players – current or potential – may be institutes like the German *Stiftungen* (foundations) and the National Democratic Institute for International Affairs and International Republican Institute in the United States; foreign governments and official bilateral aid organizations; and multilateral inter-governmental organizations such as the UN, World Bank and Asian Development Bank. Foreign NGOs such as Amnesty International and Human Rights Watch have also been involved, usually by documenting, publicizing and decrying human rights abuses. One atypical contributor has been the International Crisis Group, which has presented lengthy policy analyses and recommendations on the elections and related democratization issues to Cambodian and international leaders (International Crisis Group, 1998a; 1998b).

An important lesson for foreign organizations is that interventions restricted to the election cycle are not enough. Democracy also grows or withers between elections. Foreign engagement should be long-term. Serious reforms may take years to present, nurture, debate and enact. Nor should activities be limited to promoting specific legal or administrative reforms. 'Soft' measures such as sponsorship of public debates on electoral reform, supplying information and experts and supporting education, training, election monitoring and democratic culture change may yield greater results than 'hard' intervention such as direct lobbying for specific reforms or diplomatic and political pressure.

Cambodian civic organizations merit much more foreign attention. They have become no less a part of the election process than the government, the NEC and political parties. Their demonstrated non-partisan support of good governance and free and fair elections make their work respected across the Cambodian political spectrum. In the 1998 elections, Cambodia's election monitoring

coalitions were often critical of the government and the NEC; but in the face of vehement objections by the opposition, they maintained their steadfast opinion that the voting and counting were fairly conducted.

Prospects for the survival and development of Cambodian democracy are uncertain. Undaunted, many Cambodians, in and out of government, are working every day to promote free and fair elections and democratization in a broader sense. They incur a certain risk in doing so. Foreign organizations have an opportunity to exert a positive, and perhaps even decisive, influence on Cambodia's democratic development, both through the encouragement of electoral reform and wider efforts to change Cambodia's political culture. The only fatal mistake they can make is to neglect the opportunity that is currently available.

List of Abbreviations

BLDP - Buddhist Liberal Democratic Party
COMFREL - Committee for Free and Fair Elections
CPP - Cambodian People's Party
FUNCINPEC - Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique et Coopératif (National United Front for an Independent, Neutral, Peaceful and Co-operative Cambodia)
JIOG - Joint International Observer Group
NEC - National Election Committee
NGO - Non-governmental Organization
PEC - Provincial Election Committee
SRP - Sam Rainsy Party
UN - United Nations
UNTAC - UN Transitional Authority in Cambodia

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