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THE 2002 CAMBODIAN COMMUNE COUNCIL ELECTIONS

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NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

The National Democratic Institute for International Affairs (NDI) is a nonprofit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices and institutions. NDI works with democrats in every region of the world to build political and civic organizations, safeguard elections, and to promote citizen participation and openness and accountability in government.

Democracy depends on legislatures that represent citizens and oversee the executive, independent judiciaries that safeguard the rule of law, political parties that are open and accountable, and elections in which voters freely choose their representatives. Acting as a catalyst for democratic development, NDI bolsters the institutions and processes that allow democracy to flourish.

Build Political and Civic Organizations: NDI helps build the stable, broad-based and well-organized institutions that form the foundation of a strong civic culture. Democracy depends on these mediating institutions, which link citizens to their government and to one another by providing avenues for participation in the public policy process.

Safeguard Elections: NDI promotes open and democratic elections. Political parties and governments have asked NDI to study electoral codes and to recommend improvements. The Institute also provides technical assistance for political parties and civic groups to conduct voter education campaigns and to organize election-monitoring programs. NDI is a world leader in election monitoring, having organized international delegations in more than 50 countries, and helping to ensure that polling results reflect the will of the people.

Promote Openness and Accountability: NDI responds to requests from leaders of government, political parties and civic groups seeking advice on matters from legislative procedures to constituent service to the balance of civil-military relations in a democracy. NDI works to build legislatures and local governments that are professional, accountable, open and responsive to their citizens.

Headquartered in Washington D.C., with field offices in more than 40 countries in every region of the world, NDI complements the skills of its staff by enlisting volunteer practitioners from around the world, many of whom are veterans of democratic struggles in their own countries with valuable perspectives on democratic development.

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ACRONYMS

ACILS	American Center for International Labor Solidarity
ANFREL	Asian Network for Free Elections
BLDP	Buddhist Liberal Democratic Party
CEC	Commune Election Committee
COFFEL	Coalition for Free and Fair Elections
COMFREL	Committee for Free and Fair Elections
COHCHR	Cambodia Office of the United Nations High Commissioner for Human Rights
CPP	Cambodian People's Party
CSD	Center for Social Development
CWP	Cambodian Women's Party
EMO	Election monitoring organization
EU EOM	European Union Election Observation Mission
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia
IRI	International Republican Institute
JIOG	Joint International Observer Group
KAP	Khmer Angkor Party
KDP	Khmer Democratic Party
KID	Khmer Institute of Democracy
KIP	Khmer Improvement Party
NDI	National Democratic Institute for International Affairs
NEC	National Election Committee
NGO	Non-governmental organization
NGOCC	Coordination Committee of Associations and Non-governmental Organizations for Observing the Elections (NGO Coordinating Committee)
NICFEC	Neutral and Impartial Committee for Free Elections in Cambodia
PEC	Provincial Election Committee
RGC	Royal Government of Cambodia
SRP	Sam Rainsy Party
UNDP	United Nations Development Programme
UNTAC	United Nations Transitional Authority in Cambodia
USAID	United States Agency for International Development
VKMNP	Vongkut Khemarak Mohanoko Party

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I. INTRODUCTION

On February 3, 2002, Cambodia held elections for councils in 1,621 communes across the country. As the first local polls since the 1991 United Nations-sponsored peace plan, commune elections were widely viewed as an important step toward decentralizing power and increasing political competition throughout the nation.

This report reviews the commune council election process, from the inception of its legal framework through the post-election complaints and appeals period. It draws on NDI's active involvement in providing assistance to civil society organizations on programs to strengthen the electoral process. NDI did not field an observer delegation during the election period. That task was performed by the many domestic and international organizations that served as official observers.

Until the local elections, the Cambodian People's Party (CPP) held unchallenged sway over all of the nation's communes. Because of the elections, approximately 91 percent of all commune councils will be multi-partisan. In addition, for the first time, citizens at the local level of government had a voice in selecting the officials who have the greatest impact on their daily lives. The election results show that CPP's control over the nation's political life, however, has not been seriously shaken. The ruling party, which has effectively controlled the country since 1979, retained commune chief positions in nearly 99 percent of the communes and continues to dominate the national and provincial governments.

The commune elections followed two previous national polls, held in 1993 and 1998. The UN-organized 1993 elections, largely hailed as a success at the time, resulted in a fragile coalition government that was overthrown by the Hun Sen-led CPP in 1997. In 1998, a prevailing climate of impunity for violence directed at opposition candidates and activists, the lack of impartiality of election authorities and unequal access to media were among the concerns expressed by domestic and international observers. Each of these issues arose again in the period leading up to the 2002 commune elections.

International and domestic observers widely viewed the decentralization of governmental authority and the incorporation of opposition parties into local government as a significant step towards establishing a more democratic political system. The political climate surrounding the commune elections, however, once again detracted from the overall integrity of the electoral process. As in the 1998 parliamentary polls, violence and intimidation was commonplace. In addition, as in 1998, the commune elections were held on an uneven playing field. The CPP has long-controlled the nation's security forces (the police and the military), monopolized the electronic news media and the judiciary and has benefited from a compliant National Election Committee (NEC). The power of incumbency, the ability to raise funds, and the apparent waning popularity of one chief political party (the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia or FUNCINPEC) also contributed to the CPP's landslide victory in the commune elections.

Most important, and in contrast to previous polls, while results in a few communes were contested, the participants in the electoral process, including political parties, candidates and both international and domestic observers, did not challenge the election results, despite expressing serious concerns about the process leading up to election day. Most sectors of Cambodia appear committed to moving forward constructively with decentralized, multi-partisan local governance.

Looking forward, the term of this NEC expires in March 2002, and National Assembly elections are now planned for 2003. Since many of the same problems emerged in the 1998 and 2002 elections, Cambodian citizens, with the assistance of the international community, should make significant improvements in preparation for the 2003 parliamentary elections. Strengthening the legal framework and electoral administration and improving the political environment are key factors in enhancing the credibility of Cambodia's elections. Cambodian political parties and civil society organizations have an important role to play in improving the electoral process. The CPP and the government, however, have a special responsibility to redress the current imbalances in the electoral arena and to establish a political system that is fair and open to greater citizen participation and political competition. For the past 23 years, Cambodia's fate has largely been in their hands.

NDI Programming in Cambodia

NDI has supported democratic activists and institutions in Cambodia since 1992 through work with civic organizations, political parties and the National Assembly.

Following the 1997 coup, NDI increased its efforts to monitor the political environment and to focus international attention on the need for fundamental changes in Cambodia's political environment in order to help establish a more competitive political process. The Institute engaged in political monitoring and civic education efforts and organized an international monitoring team in conjunction with the International Republic Institute (IRI) for the July 26, 1998 National Assembly elections. Following these elections and during the development of the framework for commune elections, the Institute continued to provide technical assistance to Cambodian non-governmental organizations (NGOs), in particular the three domestic election monitoring organizations (EMOs)--the Committee for Free and Fair Elections (COMFREL), the Coalition for Free and Fair Elections (COFFEL) and the Neutral, Impartial Committee for Free Elections (NICFEC)--in the areas of advocacy, training, activation of volunteer networks and civic and voter education.

With funding from the United States Agency for International Development (USAID), the Institute's current program focuses providing technical assistance to Cambodian EMOs and other politically oriented NGOs, developing community advocacy programs and involving civil society in military reform.

II. BACKGROUND

Previous Elections in Cambodia

Elections have played a prominent role in Cambodia's democratization process since the signing of the Paris Peace Accords in 1991, which called for liberal democracy and multiparty elections. In 1993, under the supervision of the United Nations Transitional Authority in Cambodia (UNTAC), Cambodia held competitive elections, which most Cambodians and the international community viewed as a success. (The elections were for a Constituent Assembly; after adopting a new constitution the Assembly transformed itself into a parliament and ratified the formation of a new national government.) The 1993 elections, however, were plagued by violence, much of which was attributable to the Khmer Rouge, but a substantial portion was also found to be the responsibility of the CPP. Following the polling, Hun Sen rejected the election results claiming the UN had "rigged" the voting process. Although FUNCINPEC received more seats and votes in the Assembly than any other party (58 seats and 45.5 percent of the total vote), it was forced into a power sharing arrangement with the CPP (which received 51 seats and 38.2 percent of the nationwide vote). Amidst rumors of a pending coup and threats of secession in eight provinces controlled by the CPP, FUNCINPEC's head Prince Norodom Ranariddh and Hun Sen became the First and Second Prime Ministers, respectively. In a bargain brokered by King Sihanouk, they also agreed to share cabinet, sub-cabinet and provincial appointments.

Following the elections, little of the institutional or physical infrastructure developed by UNTAC remained after it departed. The elections themselves, of course, failed to bring either democracy or stability. Second Prime Minister Hun Sen overthrew his coalition partner, Prince Ranariddh, in a violent confrontation in July 1997. Several FUNCINPEC party leaders and their allies in the military were killed while other opposition party leaders and activists were forced to flee into exile.

Elections again became the focus of the international community's efforts to move forward after the CPP's violent takeover of the government in July 1997. In late 1997 and early 1998, the "Friends of Cambodia" (comprising the principal donor countries) urged the CPP to allow exiled political leaders to return and to hold "free, fair and credible" elections. Thus, the European Union (EU), Japan, Australia and the United Nations (UN) offered money, equipment and technical assistance for election administration. The US government, in contrast, believed the CPP was in control of the election machinery and therefore declined to support the NEC or the process. It instead limited its assistance to education and monitoring by NGOs and organizing an international observer delegation. While several other countries have also provided assistance to NGOs, the split in approach among donor countries regarding the direct provision of funding to the government continues to this day.

After the return of leaders from FUNCINPEC and the Khmer Nation Party (subsequently renamed the Sam Rainsy Party) from exile, the CPP won a plurality of votes and a majority of seats in national elections held on July 26, 1998. The election campaign

was again marred by intimidation and violence. In addition, the CPP government developed the election framework while the opposition parties were in exile, dominated the National Election Committee and denied opposition parties access to radio and television. Two weeks before election day, a joint NDI-IRI team concluded that the process up to that point was “fundamentally flawed.” The last days of the campaign period were relatively peaceful, however, and 93 percent of eligible Cambodians showed up on election day to cast their ballots.

After election day, the process again deteriorated. Following a perfunctory attempt to conduct recounts in a few locations, the NEC and the Constitutional Council summarily rejected formal complaints from the Sam Rainsy Party (SRP) and FUNCINPEC. It was also revealed that the NEC had altered the formula for allocating parliamentary seats, providing the CPP with five additional seats and giving it a majority in the National Assembly. The opposition parties maintained that they had not been given adequate notice of the formula revision. Post-election protests turned violent, and the formation of a new government stalled.

The 1998 elections were held under a system of proportional representation, by province. The CPP was awarded 64 of the 122 available seats in the National Assembly based on approximately 41 percent of the national vote. FUNCINPEC won 31 percent of the vote and 43 seats. The SRP won nearly 14 percent of the vote and 15 seats in the National Assembly. Because the constitution requires two-thirds of the members of the National Assembly to support the government, the CPP was unable to form a government until FUNCINPEC joined it in a coalition in the fall of 1998.

The international community, with support from Cambodian EMOs, political parties and some election officials, questioned the credibility of the 1998 election process. Their post-election recommendations highlighted the need to reverse the increasingly apparent trend that government and election officials lacked the political will to uphold international standards. As mentioned earlier, the commune elections in 2002 suffered many of the same shortcomings as had occurred in the national elections in 1998. (See Appendix A.)

III. COMMUNE ELECTIONS AND DECENTRALIZATION

Commune Elections - Concept and History

The idea of holding local elections was considered at the Paris Peace Negotiations in 1991, and discussions emerged again after the 1993 elections. Unfortunately, the previous talks are beyond the institutional memory of most organizations currently working in Phnom Penh. It is not entirely clear why the Cambodian government and the international community focused exclusively on elections and decentralization at such a low level of government, although some form of commune elections were organized in Cambodia during the French colonial period. The United Nations Development Programme (UNDP) and the Royal Government of Cambodia (RGC) have collaborated on model decentralization projects at the commune level in a limited number of areas since late 1998. Nevertheless, neither elections nor decentralization appear to have ever been seriously considered for provincial or district governments or councils.

The 2002 commune elections were to provide the foundation for decentralized development and future political competition in Cambodia. The 2002 election experience would also necessarily provide a basis for donor decisions about financial and technical support for the next national elections, expected in 2003.

Commune Electoral Framework

In January 2001, the National Assembly passed two laws crucial to decentralization in Cambodia, one governing the election of commune councils and the other governing commune administration. The Commune Election Law defines the organization, administration and process of the commune council elections. The Commune Administration Law describes the power, duties and functions of the councils in their role as administrators of the commune.

While the NEC officially adopted implementing regulations for the Commune Election Law on July 6, 2001, the Ministry of Interior and the National Committee for the Support of Commune Councils (an inter-ministerial body supervised by the Ministry of Interior) were still developing regulations, sub-decrees and ministerial instructions to implement the Commune Administration Law at the time of the February 3, 2002 elections.

The Commune Election Law and its implementing regulations call for the election of commune councils by proportional representation according to party lists. There are five to 11 representatives on any commune council, depending on the size of the commune's population. Candidates were required to be Cambodian citizens over the age of 25 who are able to read and write Khmer. The candidate at the top of the party list gaining the most votes becomes commune council chief, while the candidate at the top of the party list gaining second place (provided that party earns at least one seat), becomes deputy. Political parties fielding candidates in a commune were required to designate two

candidates for every available seat, which had the effect of preventing independent candidates from running and making it difficult for smaller parties. These requirements may explain why only eight political parties participated in the commune elections whereas 39 parties competed in the 1998 national elections.

During the development of the legal framework, many Cambodian organizations and activists had strongly advocated for a system of direct elections of individual candidates because they thought it would better serve the interests of commune residents. They believed that a proportional system would make elected councilors unduly responsive to the interests of their parties, which were responsible for determining who got the positions on party lists that would enable them to come to office. They further argued that the looming national elections might provide incentives to prioritize the concerns of the party over those of the constituents as parties jockey for local resources and advantage for their campaigns.

The 2002 Commune Council Elections

Commune elections offered Cambodia the opportunity to experiment with democracy at the local level for the first time. More than 76,000 candidates from eight parties competed in the February 3 commune council elections. The elections, therefore, presented many people with their first opportunity to become involved in electoral politics. In addition, most Cambodians, diplomats and bilateral and multilateral donors appear to believe that the commune elections were intrinsically valuable, offering a foothold for opposition participation in local politics, breaking the CPP's longstanding monopoly on commune government. The commune elections were to give the SRP, the principal national opposition party, and FUNCINPEC, the CPP's junior coalition partner at the national level, a stake in commune governance for the first time.

The CPP fielded candidates in all 1,621 communes; FUNCINPEC had candidates in 1,603 communes, or nearly 99 percent; and the SRP ran candidates in 1,501 communes, or nearly 93 percent. Cambodia's fourth largest party, the Khmer Democratic Party (KDP) fielded candidates in only 79 communes, or less than 5 percent, and the remaining four political parties each fielded candidates in no more than six communes. Fourteen communes held elections where only one political party (the CPP) fielded candidates. About 12,000 candidates, or 16 percent, were women.

Because the elections were proportional and party-based, the system ensured that the overwhelming majority of commune councils would have representation from more than one party. While the process by definition broke the CPP stranglehold on commune government (which the party and its predecessors had held since Vietnam drove out the Khmer Rouge in 1979), the results of the election show that the ruling party still controls the commune chief positions in 1,598, or almost 99 percent of all communes. While the CPP took 7,703 seats nationwide, FUNCINPEC seated 2,211 members and SRP seated 1,346 members on commune councils across the country. Notwithstanding the proportional system, in 148 councils (approximately 9 percent), the CPP is the only party represented, either because no other party fielded candidates or no other party garnered enough votes to gain a seat.

Problems in the Commune Election Framework

What emerged from the two-year drafting process for the Commune Election Law and Commune Administration Law was a legal framework that did not establish impartial election authorities and that left key aspects of the fiscal and decision-making authority of commune councils to be determined only after the elections.

Despite the recommendations made after the 1998 election, the legal framework for the 2002 elections failed to establish independent or impartial electoral authorities. Although Cambodian NGOs made reform of the NEC a key part of an extensive advocacy campaign in 2000 and 2001, the new laws made no changes to the body's structure, and the NEC retained essentially the same CPP-dominated membership it had in 1998. (See Appendices C and D.) The only changes were the replacement of ostensible FUNCINPEC representative Tea Chamrat, who had supported the CPP after its violent government takeover in 1997, with another FUNCINPEC representative, Oung Kheng, whose allegiance to FUNCINPEC was less uncertain. In addition, a representative from the Sam Rainsy Party replaced Keo Lundy, who had represented a pro-CPP breakaway faction of the Buddhist Liberal Democratic Party. The NGO representative, a known CPP supporter whose appointment in 1998 was widely believed to have been the result of vote buying and coercion, remained unchanged in spite of the objections of the domestic NGO community. Molinaka retained its representative on the NEC, even though the party lost its sole National Assembly seat in 1998.

During a semi-annual meeting with the donor community in Phnom Penh on January 16, 2002, the prime minister implicitly acknowledged the NEC's lack of credibility by calling for substantial reform of the election committee before the 2003 elections, following the expiration of the current NEC's mandate.

Moreover, the Commune Election Law itself and its implementing regulations were promulgated with gaps and ambiguously worded sections that created the potential for multiple and inconsistent interpretations. As a result, the NEC was compelled to formulate directives and announcements clarifying issues that arose during virtually every stage of the election process on an *ad hoc* basis.

The legal framework for decentralization also left key aspects of the authority of commune councils unresolved. Yet to be determined by the Ministry of Interior and the National Committee for the Support of Commune Councils at the time of the elections was the process for electing local village chiefs, determining development projects and the procedure for levying local taxes. As such, voters went to the polls on February 3 to elect commune councils whose authority was ambiguous. Furthermore, while \$5 million dollars, plus an additional \$1.5 million from international donors, was budgeted to the National Election Committee to be allocated to the commune councils based on an existing formula, no mechanism for the distribution of funds had been developed at the time of the elections. Effectively, by waiting until after the elections to determine crucial regulations governing the councils, some observers believed the government purposely ensured that national authorities would know the political leanings of communes before committing

resources.¹

In addition, both the legal framework governing commune administration and the reality of the Cambodian political system present severe limits on the ability of the newly elected councils to act as genuinely representative bodies. Some Cambodians point to the provisions that the Ministry of Interior place full-time officials, or “clerks,” in each commune to “assist” the work of the commune councils as a mechanism to ensure central government monitoring of, or control over, commune activities. In addition, while communes will now comprise elected representatives, the multiparty councils will continue to be overseen by, and seek funds and operational support from, the CPP-dominated government at higher levels.

¹ Molly Ball, "From Paper to Power," *Cambodia Daily*, February 23-24, 2002.

IV. PRE-ELECTION ISSUES

Violence and Intimidation

As in 1998, violence and intimidation plagued the 2002 pre-election environment and campaign. Between January 2001 and January 10, 2002, according to a report by the Special Representative of the UN Secretary-General for Human Rights in Cambodia, "Fifteen political activists have been murdered or have died in circumstances that are suspect."² Between November 1, 2001 and January 10, 2002 nine of these murders occurred, including five activists from FUNCINPEC and four from the SRP. (See Appendix U.) By the time of the elections on February 3, the Cambodia Office of the UN High Commissioner for Human Rights (COHCHR) determined that 17 murders were connected to politics. The UN report warned that serious violence appeared to be accelerating ahead of the formal campaign period. Report author Adrian Edwards of the UN told the Cambodia Daily that political violence was in some cases worse than in 1998.³

CPP leaders, including Deputy Prime Minister and Minister of the Interior Sar Kheng announced that these murders were not politically motivated--arguing that they resulted from local disputes or common crimes--and dismissed their importance.⁴ On February 6, the Ministry of Interior released a statement declaring categorically "since the beginning of the electoral campaign until the present, there has been no politically motivated crime."⁵ (See Appendix E.)

While governmental authorities conducted virtually no murder prosecutions relating to the political violence of July 1997 or during the months leading up to the elections in 1998, strong protests from the international community prompted investigations and prosecutions in early 2002 in at least some of the cases of candidate murders. The Ministry of Interior claims to have made 16 arrests in these cases, although it continues to consider them not politically connected. According to the COHCHR, as of February 27, convictions were handed down in three of the murder cases.

The UN Report also documents numerous incidents of intimidation throughout the country. The report cited the illegal collection of voter-registration cards by commune and village authorities in many parts of the country, stating "seemingly minor offences, that also include such practices as the destruction of political party signboards, exert a powerful

² "The Pre-Campaign Period: January 2001 – January 10, 2002," Cambodia Office of the United Nations High Commissioner for Human Rights, January 11, 2002, p. 2.

³ Matt McKinney, "UN Report Sharply Criticizes Election Violence," *Cambodia Daily*, January 16, 2002, p.1.

⁴ Brian Calvert, "Government Urged to Reopen Sites to Register All Voters," *Cambodia Daily*, September 5, 2001. Furthermore, CPP leaders also claimed that the media failed to report violence against the party's members. They cite eight incidents since late 2001, at least four of which resulted in deaths. None of the incidents cited appears to involve a CPP candidate for commune council.

⁵ Statement of Spokesman of Ministry of Interior, February 6, 2002.

intimidatory [sic] effect in Cambodia's fragile political environment."⁶ Other instances of intimidation recorded by the COHCHR include explicit threats and death threats against candidates, arson attacks and the destruction of property and party signboards. Two-thirds of the cases of intimidation and violence were directed against members of the Sam Rainsy Party.⁷ The report also said, however, that regions that had strongly supported the CPP in the 1998 elections had reported fewer cases of intimidation.

Use of Extra-Judicial Conciliation Processes

As complaints of violence and intimidation mounted during the pre-election period, election officials alleged that investigations were underway but were often unable to offer documentation supporting this claim. As it became increasingly apparent that commune and provincial election committees were reluctant or unwilling to investigate or prosecute alleged perpetrators--some of whom were senior-ranking government officials at the local, district and provincial levels--the NEC authorized and promoted the use of an extra-judicial conciliation process to stem and redress accusations of violence and intimidation.

On December 11, 2001, NEC Chairman Chheng Phon instructed provincial election officials to hold regular, informal meetings to improve the security situation and to "prevent and settle all the cases that could happen before and after the election campaign."⁸ (See Appendix F.) While such conciliation methods can serve as an effective method of conflict prevention, using them to settle official complaints in effect circumscribed the formal investigative and punitive measures mandated in the Commune Election Law. Indeed, the NEC also made clear its commitment to holding hearings to address official complaints. On November 4, the NEC called on all commune election committees (CECs) "to hold a hearing to punish offenders of the electoral law and...to ensure the effectiveness of the hearing process."⁹ (See Appendix G.) On January 29, 2002, the NEC reaffirmed its requirement that CECs and provincial election committees (PECs) to hold hearings to resolve complaints.¹⁰

While many cases of intimidation should have been punished by penalties stipulated in the law, in practice, local officials reportedly made widespread use of conciliation processes in which little more than an apology was considered suitable recourse. These frequently took the form of meetings that brought together complainants,

⁶ "The Pre-Campaign Period: January 2001 – January 10, 2002," COHCHR, p. 2.

⁷ *Ibid*, p. 3.

⁸ "Directive: On Regular Meetings for Strengthening Security," National Election Committee, December 11, 2002 (Unofficial translation by the UNDP).

⁹ "Instruction: On the Procedures of Hearings to Punish Offenders Violating the Commune Election Law," National Election Committee, November 4, 2001 (Unofficial translation by the UNDP).

¹⁰ "Directive: On the Resolution of Complaints Concerning the Electoral Campaign," National Election Committee, January 29, 2002 (Unofficial translation by the UNDP).

election officials and the alleged perpetrators to discuss the issue and possible resolutions. Such meetings typically resulted in some form of an apology by the perpetrator and complainants were urged to drop their charges. In one case, for example, a written apology by a CPP village chief accused of illegally collecting voter registration cards was posted in the CEC office in lieu of administering fines or other punitive measures clearly specified in the law. In another instance, CEC officials were eager to consider a case complete following the return of voter cards that had been illegally collected by village and commune authorities. An SRP candidate, whose card was among those collected, continued to press for a proper hearing and the requisite penalties. While this candidate brought the complaint to the PEC, a hearing has yet to be conducted.¹¹

International and domestic election observers expressed concern that the NEC's reliance on conciliation methods by election committees diminished their commitment to upholding the law, which clearly stipulates punitive measures. They strongly criticized the extra-judicial process as its widespread use became increasingly apparent. At a February 19 meeting organized by The Asia Foundation, several observers expressed concern that a dangerous precedent was being set for future elections since potential violators might come to believe that the formal requirements of the law carry no weight and that violators would not be subject to punishments more severe than a conciliation meeting.

Voter Education

Throughout the pre-election period, the NEC attempted to control closely the preparation and distribution of voter education materials. The regulations developed by the NEC required its advance approval for all voter education materials--including videos, tapes, leaflets, books, text and pictures for newspapers, and slogans or pictures for T-shirts and hats--to be distributed by Cambodian and international organizations.

Cambodian NGOs and many in the international community criticized the regulations for exceeding the authority of the election law and contravening rights of free speech and expression. In a July 18 meeting jointly organized by NDI and the COHCHR, and widely attended by diplomats, donors, foreign advisors and local NGO leaders, the NEC agreed to amend the regulations to make submission of materials merely voluntary. Under this compromise, NGOs would be responsible for the quality and accuracy of their own materials but could involve the NEC to ensure the technical accuracy of the voter education information. (See Appendices H and I.)

Accordingly, the amended regulations established a process of voluntary approval from the NEC. In practice, however, it soon became apparent that the voluntary approval process turned into a *de facto* requirement in the provinces, where local election committees often required NGOs to obtain official permission before distributing materials. Even though NICFEC received official permission from the NEC to stage voter education dramas around the country, for example, provincial election committees nevertheless insisted on local approval as well, resulting in delays and additional costs.

¹¹ "Report on Complaints to CECs and PECs for 24 Provinces: October 14-November 25, 2001," National Election Committee Legal Services Department, November 27, 2001.

Moreover, on December 29, 2001, NEC Chairman Chheng Phon circulated a directive that negated the July amendments by requiring provincial and municipal governments to establish commissions to review and approve all voter education materials during the campaign period. (See Appendix K.)

For the most part, voter education programs conducted by Cambodian NGOs were similar to those undertaken during the 1998 election. Cambodian NGOs used televised public service announcements, posters, election-oriented drama performances and community discussion groups to inform the electorate of registration and election day procedures. Some NGOs provided opportunities for political parties to address substantive issues. The Center for Social Development (CSD), for example, produced a voter guide that enabled each registered political party to explain its national platform, including its party principles, and positions on education, health, commune development, environment and commune security. Other NGOs undertook more innovative voter education programs. Several Cambodian labor unions, with the assistance of the American Center for International Labor Solidarity (ACILS), organized an event in Phnom Penh in which candidates from political parties came together to address issues of concern. And the Khmer Institute for Democracy (KID), with assistance from NDI, organized candidate debates in six communes across the country in which candidates addressed voters' concerns on priority issues within the commune.

News Reporting and Media Access

The state-owned broadcast media largely ignored the commune election process and the opposition parties. In its preliminary election statement, the EU Election Observation Mission reported that state TV devoted more than 75 percent of its coverage before the elections to the government and a further 12 percent to the CPP, while FUNCINPEC received only 2 percent of the coverage and the SRP less than 1 percent. The EU Mission added, "Coverage by private Cambodian TV showed a similar bias."¹² This inequality is significant as broadcast media has a far wider reach than other news sources in Cambodia.

Rather than encouraging voter education and public discussion of the elections, the NEC blocked the broadcast of voter education roundtables, party campaign messages and candidate debates. The NEC's broad restrictions on media access drew criticism from domestic and international organizations as the debate over what could be broadcast became contentious.

Early promises by the NEC that it would provide fair and equal media access for parties during the campaign failed to materialize. In 1998, the NEC allowed each party one five-minute uncensored television spot per day during the campaign period, in accordance with the National Election Law, which requires the NEC to "take steps to publicize political messages at the request of political parties...based on equal and orderly

¹² EU Election Observation Mission Preliminary Statement, February 5, 2002, p. 3.

access to media."¹³ While the Commune Election Law contains no equivalent clause, Article 10 grants the NEC powers, functions and duties in addition to those delegated to it in the National Election Law. As such, the fact that the NEC did not provide equal access to media for political parties for the 2002 commune elections was the result of an exceedingly narrow interpretation of the Commune Election Law. As the Deputy Head of the EU Election Observation Mission said, "The NEC interpreted its role in a far narrower and more restrictive manner than in 1998."¹⁴

Originally, state-run television made 70 minutes per day available to the NEC for coverage of the campaign for the commune council elections. The NEC was to divide this time equally among the eight participating political parties. (See Appendix M.) Subsequently, the NEC indicated an interest in using this time to air a series of 15 voter education roundtables sponsored by NGOs in which each party had equal time to answer questions about agreed-upon issues. The NEC itself initiated and sought funding for five of the roundtables.

The NEC later reversed itself, deciding not to allow the state-run television station to air the programs and refusing to provide the necessary paperwork enabling private stations to do so. This reversal came after the December 31 taping of one such roundtable in which the minister of women's affairs, who represents FUNCINPEC in the coalition government, indirectly credited her party for a ministry program to improve the situation for women. Accusing the minister of improper behavior, the NEC member responsible for media, Prum Nhean Vicheth, cancelled the entire series. The minister was forced to write a letter of apology to the prime minister that was broadcast nationwide, and the government dropped from an airplane thousands of copies of a news release criticizing the minister on the matter, even though the roundtable had never been broadcast.¹⁵ Later confirming its cancellation of all of the party roundtables, Prum Nhean Vicheth explained only that some parts of the discussions "may incite problems with the people."¹⁶

On January 28, 2002, just days before the elections, the NEC voted to confirm its ban on the broadcast of the 15 voter education roundtables. Although the vote was not public, six commissioners reportedly supported the ban, two opposed it and two others supported airing the programs after editing. Prum Nhean Vicheth said that because the election is a local one, there was no obligation to provide national broadcast time to all parties. Cambodian and international observer groups, as well as many donor aid agencies, diplomats and political parties advocated a broader interpretation of the law, thereby

¹³ National Election Law, Article 27, National Assembly of the Kingdom of Cambodia, December 26, 1997.

¹⁴ Rajesh Kumar, "UN Agency Condemned for Lobbying Tactics," *Phnom Penh Post*, February 15-28, 2002, p. 6.

¹⁵ Lor Chandra and Jody McPhillips, "NEC Widely Criticized for Debate Blackout," *Cambodia Daily*, January 14, 2002, p. 9.

¹⁶ Lor Chandra and David Kihara, "NEC Reverses Decision on Roundtables," *Cambodia Daily*, January 24, 2002, p. 1.

providing the Cambodian people with greater access to information.

Similarly, both state-run and private television stations refused to air taped debates among commune candidates in the absence of written permission from the NEC. The sponsors, KID and NDI, offered to pay private stations for the broadcast time, and both TV9 and Bayon initially expressed interest. At a meeting in January attended by the directors of all TV stations, however, representatives of the Ministry of Information and the NEC reportedly warned the stations about airing election-related coverage.

Cambodian authorities offered little legal explanation for the broadcasting ban. At a January 8 meeting organized by the UNDP, Prum Nhean Vicheth stated that it was irrelevant for voters to hear from individual candidates since the candidates themselves do not have plans for the development of their communes. Deputy Prime Minister Sar Kheng supported the NEC's decision because the election law does not specifically require roundtables or candidate forums. "These roundtables might create political confusion, focusing too much attention on what should be small elections," he said.¹⁷

Advisors to the UNDP, working within the NEC, later defended the broadcast ban in a memorandum circulated to diplomatic missions after the elections. The memo stated, "The NEC is not and should not be the vehicle of the electoral platform of political parties." (See Appendix EE.)

Voter Registration

Technical and procedural irregularities as well as widespread deliberate acts of intimidation hampered the voter registration process. The voter registration process was originally scheduled to run for three weeks, from July 21 to August 19, 2001. Because of lower than expected turnout rates, the EMOs urged the NEC to extend the registration period in some locations. The NEC reopened registration in some locations for three-day periods, extending to August 25. On August 26, the NEC reported that only approximately 83 percent of 6.2 million eligible voters registered for the commune council election, meaning that approximately one million potential voters did not register. These figures stand in stark contrast to voter registration rates for the 1998 elections, which surpassed 98 percent of the eligible population.

The EMOs uniformly expressed concern over the low voter registration turnout rates. They cited reasons including late distribution of registration materials and equipment, failure to publicize information for voters about the locations and schedule of registration centers, inadequate training of registration officials, confusion over registration requirements and the requirement that voters must register in their communes of permanent residency, which posed problems for students and factory workers who had left their homes and temporarily resided in the cities.¹⁸ Furthermore, whereas the election law

¹⁷ Lor Chandra and Jody McPhillips.

¹⁸ COMFREL's Pre-Election Assessment, January 31, 2002; "Joint Statement on the Concerns of Voter Registration," COMFREL and NICFEC, August 11, 2001; "Summary Report on the Voter Registration Process" COFFEL, September 13, 2001.

explicitly permits monks, who frequently engage in discussions on politics and commune issues and voted in large numbers during the 1998 elections, to vote, many were forbidden by the heads of their pagodas from participating in commune elections. As observers believe monks tend to vote for opposition parties, they considered the prohibition against their participation in commune elections to be based on political rather than religious grounds.

The voter registration appeals process was also cumbersome and structured to put the burden of proof on the voter accused of ineligibility rather than the accuser, who presumably had a reason to register the complaint. According to the Commune Election Law, any registered voter in that commune, national observer or party agent could file a complaint alleging a registered voter was ineligible. The identified voter then had to appear in person before the commune or, if appealed, provincial authorities. Election observers report that the SRP took advantage of this burdensome process by filing many specious complaints against ethnic Vietnamese voters who seemingly met voter registration requirements. Four hundred and ninety-four cases related to nationality issues were heard at the commune and provincial levels in Phnom Penh alone,¹⁹ the vast majority brought by SRP agents.

Candidate Registration

The candidate registration process, which ran from October 14 to December 2, was for the most part handled smoothly with few of the problems that marred voter registration. While the language governing candidate registration had the potential for subjective and uneven interpretation by election committees, the NEC, EMOs and international community foresaw many of the shortcomings in the regulations and worked proactively to resolve them in advance.

In particular, the Commune Election Law regulations pertaining to candidate registration required candidates to demonstrate Khmer nationality at birth as well as literacy. In the weeks before candidate registration commenced, the EMOs issued statements highlighting concerns that these regulations would be subjectively interpreted and called on the NEC to issue clear guidance to election committees at all levels to establish uniform and coherent criteria to determine a candidate's eligibility.²⁰ (See Appendix P.) In response, the NEC issued a directive on October 5 stating that commune and provincial election committees can only administer candidate registration and are "not authorized to reject [candidates] or raise questions of any kind."²¹ By clarifying that lower election committees did not have the power to determine a candidate's nationality or

¹⁹"Issues and Irregularities on Voter Registration for Commune/Sangkat Council Election," COFFEL Observation Report for Phnom Penh, August 21, 2001.

²⁰ "Statement of NICFEC – Four Concerns," September 27, 2001.

²¹ "Directive: On Procedures for Candidate Registration," National Election Committee, October 5, 2001 (Unofficial translation by NDI).

literacy, the NEC effectively prevented potential problems from arising.

Furthermore, controversy arose around Article 121 of the Commune Election Law, which stipulated that if a single candidate on a party's list were disqualified during the appeals process, the "CEC shall reject the registration of that list of candidates [of] the political party." Concerned that this provision gave too much power to local election committees to delete whole party lists, the EMOs, and NICFEC in particular, brought their objections to the attention of the political parties and international community. Fifteen parliamentarians brought the issue before the Constitutional Council, which ruled on October 22 that decisions made during the appeals process that resulted in modifications to the party's list could be made without disqualifying the entire party list in that commune. (See Appendix Q.) Following this clarification, the political parties reported no problems of this nature.

Freedom to Campaign

During the 15-day official campaign period, which ran from January 18 to January 31, supporters of both the ruling and opposition parties took part in rallies and street parades throughout the country. The CPP also apparently made much wider use of door-to-door campaigning than did other parties. The campaigns in many areas of the country were robust, despite the reported violence and intimidation that occurred throughout the pre-election period. The SRP, however, complained that local authorities obstructed its campaign in several locations. FUNCINPEC also said that it had restrained its campaign activities significantly to avoid conflict with the CPP.

The elections took place under a code of conduct that ordered parties to "absolutely avoid criticizing [the] personality of individual[s] and other part[ies]."²² On January 15, 2002, the NEC issued a directive to the PECs to prohibit candidates from "criticizing the personality of individuals or political parties." This gave local authorities discretion to sanction campaign activities and materials they deemed in violation of that directive. On January 20, the NEC instructed the political parties to stop playing cassettes and videos that criticized other persons or political parties, saying that these actions could provoke quarrels and damage the election environment.²³

Accordingly, provincial and commune election committees in some locations prevented the SRP from playing a tape recording of speeches that party leader Sam Rainsy had delivered in the National Assembly. Sam Rainsy said that he had provided the speech to the NEC in advance and that they had not objected to any of its contents. The speech did not mention any politician by name but rather stated in general terms that Cambodia has had "very bad leaders for 23 years" and blamed both parties in the ruling coalition for not addressing the serious issues of corruption, deforestation, poverty and

²² "The Code of Ethics for Political Parties, Agents of Political Parties and Candidates in the Commune-Sangkat Council Election," Art. IV (2), National Election Committee, March 26, 2001 (unofficial translation by Star Kampuchea).

²³ Press Release from the National Election Committee, January 20, 2002.

unemployment.²⁴ Some CECs also confiscated printed materials from the SRP that included a photo of Sam Rainsy with the king, even though the Law on Political Parties only banned the use of the king's likeness as a logo.²⁵ In response to SRP complaints, the NEC ordered local authorities to end such obstruction and the party proceeded to carry out a vigorous grassroots campaign around the country.

Also during the 15-day campaign period, KID and NDI conducted a series of six commune council candidate debates. Efforts were made to conduct the debates in communes that would enable the participation of all political parties, including the smaller parties fielding candidates in a limited number of communes. Seven of the eight registered political parties, including all the major ones, agreed to take part and assisted in the design of a format that was regarded as fair for all participants. The debates provided voters with the unique opportunity to hear directly from candidates about their plans for commune development.

Domestic Monitoring and Obstacles

Domestic EMOs fielded nearly 29,000 monitors on election day. Of the three main EMOs, COMFREL deployed monitors in every polling station; COFFEL covered every polling station in 16 provinces and municipalities; and NICFEC monitored some polling stations in all 24 provinces. Moreover, the domestic EMOs monitored every phase of the pre-election period, calling attention to problems and issues through regular statements.

This coverage occurred in spite of election authorities placing considerable obstacles in the way of domestic election monitoring. Most notably, the Commune Election Law created the new Coordination Committee of Associations and Non-governmental Organizations for Observing the Elections (commonly referred to as the NGO Coordinating Committee or NGOCC) to "coordinate with the NEC in organizing Associations and NGO observers." While the principal domestic election monitoring organizations first considered boycotting the NGOCC, viewing it as an additional and unnecessary level of bureaucracy between themselves and the NEC, they soon determined that this would only exclude them from participating in the elections. The new entity eventually received donor funding from the aid agencies of Australia and the Netherlands.

The presence of the NGOCC inhibited the EMOs' ability to monitor the elections independently. On several occasions, for example, the NEC refused to meet with the EMOs but told them to bring their concerns to the NGOCC, which would then convey them to the NEC on their behalf.

In addition, the Commune Election Law and its implementing regulations provide for the NGOCC to ensure that all domestic monitors are adequately trained in the law. (See Appendix S.) As the NGOCC did not believe domestic monitors had performed

²⁴ Unofficial COHCHR translation of excerpts from the Sam Rainsy Party campaign tape.

²⁵ The Law on Political Parties, Article 11, Chapter 3, the National Assembly of the Kingdom of Cambodia, November 18, 1997.

satisfactorily during the voter registration process and wanted to take a more direct role in training monitors itself, it subsequently refused to certify COMFREL and NICFEC monitors applying for accreditation. (See Appendix T.) Domestic and international observers widely considered the responsibility of directly training domestic monitors to be beyond the role and function of the NGOCC. A compromise was eventually struck by which observers would be certified if the EMOs provided evidence of proper training and if the NGOCC then conducted a master training in Phnom Penh which would serve as the basis for future trainings conducted by the EMOs in the provinces.

The NEC also imposed a cumbersome process of accreditation on domestic election monitoring groups; according to the specified process, after the NGOCC and the NEC itself approved an organization's proposed list of observers, the NGOCC referred the lists to the relevant PECs where individual observers were supposed to appear and to present photos and photocopies of the identification cards in order to be issued accreditation cards. This presented a serious obstacle for monitors living in remote areas for which transportation to provincial centers posed a problem. In response to objections from EMOs, however, the NEC reportedly directed PECs to loosen these procedures.

V. ELECTION DAY

The Assessments of International and Domestic Observers

Most of the international and domestic observer groups adopted a positive outlook on the conduct of election day but were critical of the overall process in their post-election statements. Statements were released before the results were tabulated and complaints process commenced. Consequently, allegations of vote buying, intimidation and significant technical irregularities emerging in the immediate post-election period often were reported too late to be included in the reports of international organizations.

Of the international organizations, the European Union had the largest presence with more than 30 long-term observers and 120 short-term observers covering every province on election day. The February 5 statement of the EU Election Observation Mission (EU EOM) offered a positive evaluation of election day, "The overall pattern on election day was of a well administered process with voters participating peacefully and in large numbers, with problems limited to isolated incidents." (See Appendix BB.) The EU EOM went on to cite several problems in the process, including violence and intimidation, inadequate law enforcement, restrictive interpretations of campaign regulations and inadequate and biased media coverage. The EU EOM also found cause for concern in the NEC's more restrictive interpretation of its role in these elections than in 1998 as well as insufficient voter education efforts. The EU is planning to release a final assessment in March.

The Asian Network for Free Elections (ANFREL) monitored nine sensitive provinces during the pre-election period and fielded a total of 65 international observers, deployed to all 24 provinces and covering more than 400 polling stations, on election day. In a final statement on February 15, ANFREL stated, "Taken as a whole...the commune council elections have been a positive step in strengthening democracy in Cambodia...Election day passed peacefully and without serious incident. However, ANFREL remains deeply concerned about the serious cases of violence and intimidation experienced prior to the election." (See Appendix AA.) The report goes on to cite serious concerns for the future, including violence and intimidation as a significant feature of Cambodian elections, insufficient efforts by local election committees to investigate and prosecute election violations, the abuse of monopoly power and influencing of voter choice by the ruling party, the failure to adhere to international standards for media access, and the persistence of potentially significant technical irregularities. The statement proceeds to recommend redressing these shortcomings through creating impartial election committees, strengthening the election law and related regulations, enhancing the technical capacity of election committees, allowing NGOs to function independently and conducting better voter education efforts.

The International Republican Institute (IRI) fielded 17 observers. In a statement released a day after the elections, the IRI delegation declared that the elections were "administered competently, but did not meet international standards. Election Day demonstrated that Cambodians have the capacity to meet these standards, but in truth, the Cambodian government took proactive measures to prevent them from rising to

international standards." (See Appendix CC.) IRI further highlighted the peaceful transition of power for commune chiefs, the resolution of electoral disputes according to the law, and the fair and timely implementation of the Commune Administration Law as key requirements for a successful transfer of power.

Domestic election monitoring organizations fielded nearly 29,000 monitors on election day. In a joint statement issued by COMFREL, COFFEL and NICFEC on February 12, the three largest EMOs considered that the "commune council election was conducted in a positive manner. Despite instances of technical irregularities, and cases of political intimidation, the commune council election proved to be an event towards multiparty democracy." The organizations issued statements reporting on technical irregularities and other problems that arose both on polling day and during the ballot counting phase. They continued to monitor the election process throughout the appeals and final tabulation phase.

VI. POST-ELECTION PROBLEMS AND RESULTS

Post-Election Period

While the voting process on election day was found acceptable by most observers and political parties in their initial statements, a different picture emerged for several areas of the country in the immediate post-election period. Political parties reported cases of last minute vote buying. In particular, CPP officials were widely reported to have allegedly engaged in money and gift-giving on the night before the elections. While infractions reported during the pre-election period seemed to occur in isolated spots across the country, a consistent pattern for vote buying in broader geographic areas emerged. This suggested that violators might be following centralized instructions.

Also following the elections, isolated reports of retribution against opposition and FUNCINPEC supporters emerged. Monitoring organizations have investigated many of these reports but have only been able to confirm acts of retribution in a handful of communes in Kampong Cham and Kampong Thom. While this is a marked improvement over the widespread repercussions following the 1998 elections, domestic and international observers remain concerned that the government appears hesitant to confront this problem.

Grievances and Appeals

Political parties and EMOs filed a large number of complaints in the days following the election, but the total number of complaints seems to have been significantly lower than in the 1998 election. The process for filing and handling these complaints mirrored the three-tiered approach to voter and candidate registration complaints, beginning with the CECs, followed by the PECs and NEC as appeals warranted. Political parties, EMOs and even the NEC treated this as a very decentralized process with few of the original complaints having been reported to or tracked by their Phnom Penh headquarters. This decentralization of monitoring the grievance and appeal process makes it difficult to report fully on those cases that were decided upon in the provinces.

Some notable examples can be cited, however. The Sam Rainsy Party filed a total of 91 complaints. Most of them called for recounts in polling stations or communes where the party lost by a narrow margin and there were a suspiciously high number of invalidated ballots. As a result of these complaints, three recounts were held and the SRP picked up an additional commune chief position in Kampong Speu.

A total of 57 complaints were reported to FUNCINPEC headquarters in Phnom Penh but the party could not document how many were pursued by election officials or if they had affected the results of the election.

CPP filed one complaint in response to the SRP's request for a revote in the contested commune in Kampong Speu.

Many of the complaints filed by political parties were either incomplete or filed

past the deadline, and therefore denied by election officials. At the same time, the Sam Rainsy Party reported to NDI that several of their complaints that were properly completed and submitted on time were summarily rejected by CECs and PECs without the hearings required by law. On February 19, 2002, the NEC voted to decline to hear the six remaining SRP complaints. This vote was the subject of a protest rally held by SRP on February 23.

Based on their own determination of technical irregularities, the NEC held recounts in six polling stations in three communes in Prey Veng province and one polling station in a commune in Banteay Meanchey.

Results

Final certified election results indicate that more than 4.5 million voters went to the polls, or approximately 87 percent of registered voters. Keeping in mind that only 83 percent of Cambodia's eligible voters registered for the commune elections, this marks a sharp decrease from the 1998 elections during which 98 percent of eligible voters registered and nearly 94 percent turned out on polling day.

The CPP now holds control of 1,598, or nearly 99 percent, of all communes. The SRP won commune chief positions in 13 communes (less than 1 percent) and FUNCINPEC now holds control of 10 communes. The Khmer Democratic Party won one councilor position but does not hold the Chief position on any council.

To get an accurate picture of the gains made in this election by the opposition, and the real prospects for political power sharing, one must consider the deputy and second deputy position on each commune council. The table below reflects National Election Committee results for all 24 provinces.

Political Party	Commune Chiefs	Deputy Commune Chiefs	Second Deputy Commune Chief	Members of Commune Council	Total
CPP	1598	789	154	5162	7703
FUNCINPEC	10	547	855	801	2211
SRP	13	285	615	433	1346
KDP	0	0	0	1	1
KAP	0	0	0	0	0
CWP	0	0	0	0	0
KIP	0	0	0	0	0
VKMP	0	0	0	0	0

Unlike in 1998, the seat allocation formula appears to have been uniformly

followed in all parts of the country. As a matter of practicality, most seat allocation computations were done at the commune level. However, the presence of a computer program at the provincial level, designed to generate official seat allocation results after operators input vote totals, appears to have acted as a strong deterrent to fraud.

VII. CONCLUSION

It is NDI's hope that this report, coupled with the recommendations put forward by both domestic and international observers, for these and past elections, will be helpful to the international community and Cambodian authorities, political parties and civic organizations, seeking to promote reform of the electoral process and to advance democratic practices and institutions.

APPENDICES

A. A Summary of Findings and Recommendations from the 1998 Elections,
National Democratic Institute for International Affairs, February 2002

APPENDIX A

A SUMMARY OF FINDINGS AND RECOMMENDATIONS FROM THE 1998 ELECTIONS

*Prepared by the National Democratic Institute for International Affairs
February 2002*

In light of serious controversies that called the legitimacy of the 1998 election process into question, a consensus emerged within the international community, supported by the views of Cambodian NGOs, political parties and some election officials, on the need for fundamental changes in subsequent elections. These included conclusions and recommendations offered by the UN and several of its constituent bodies, NDI, the International Republican Institute (IRI), the Asian Network for Free Elections (ANFREL) and the European Union (EU) as well as by Cambodian election monitoring organizations and members of the NEC itself.

The international community and domestic organizations believed these changes were necessary for future elections in Cambodia were to comply with international standards as well as national law. While Cambodia Prime Minister Hun Sen recently dismissed international standards, saying they "exist only in sports," Cambodian officials have an obligation to ensure the integrity of a democratic electoral process.²⁶ The 1991 Paris Peace Accords committed Cambodia to a "system of liberal democracy on the basis of pluralism" and mandated "periodic and genuine elections . . . with a requirement that electoral procedures provide a full and fair opportunity to organize and participate in the electoral process." (Annex 5, Section 4). The agreement expresses a commitment to "free and fair elections" throughout. The Commune Election Law likewise states that commune councils are to be elected in a "free, fair and just way." (Article 2.)

International law and standards establish democratic elections as the basis for democratic government. The Universal Declaration of Human Rights provides that the "will of the people shall be the basis of the authority of government" as "expressed in periodic and genuine elections." (Article 25.) The International Covenant on Civil and Political Rights, to which Cambodia is a party, makes this aspiration legally binding by providing that "Every citizen shall have the right and the opportunity . . . [t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot . . ." (Article 21(3).) Heads of State and Government gathered at the UN in September 2000, including the prime minister of Cambodia reaffirmed their commitment to international standards in the UN Millennium Declaration:

We [heads of state and government gathered at the UN from September 6 to 8, 2000] will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms . . . We resolve therefore: To respect fully and

²⁶ Ham Samnang, "Hun Sen: 'Long Noses' Must Study Before Criticizing Vote," *Cambodia Daily*, February 8, 2002, p.16.

uphold the Universal Declaration of Human Rights. . . .To strengthen the capacity of all our countries to implement the principles and practices of democracy and respect for human rights To work collectively for more inclusive political processes, allowing genuine participation by all citizens in all our countries.²⁷

There is broad international consensus that for elections to be free and fair, there must be meaningful opportunities for political parties to compete, reasonably equitable access to media, impartial election administration, fair rules of political contestation, a political environment free of intimidation, and prompt and just resolution of election-related disputes and grievances in addition to fair conduct of the balloting and counting. This consensus emerges from international practice and numerous international declarations and agreements, including, for example, the formal declaration of standards for free and fair elections by the Inter-Parliamentary Union in 1994, of which Cambodia is a member.

Despite its professed commitment to democratic elections, the Cambodian government failed to ensure that the 1998 elections met international standards. International and domestic election observers highlighted the need to address impunity, establish impartial election authorities and develop a more cohesive international response to enhance the quality of future elections and ensure viable and sustainable democratic development.

Impunity

One clear theme that emerged from virtually every domestic and international monitoring report from 1998 was the critical need for Cambodia to investigate and prosecute sufficiently perpetrators of violence and intimidation. International and domestic observers were clear and vocal on the need to improve the political environment, among other things by ending the climate of impunity that had prevailed after the 1997 coup through the 1998 elections.

Virtually all of the pre-election reports of international monitoring groups, diplomats and domestic EMOs emphasized this problem. Senior UN official Francesc Vendrell reported on the problem of extra-judicial killings to the UN Security Council on July 14, 1998. NDI and IRI issued a joint statement in Phnom Penh on the same day that expressed concern about the pre-election environment, including “pervasive political violence” and a “culture of impunity.” One week before the election, the UN Cambodian Office of the High Commissioner for Human Rights (COHCHR) cited “13 killings, 4 alleged killings, 3 attempted killings, 7 illegal arrests and detention, 6 instances of physical abuse, 1 attempted abduction and over 150 credible allegations of harassment and intimidation” that it believed to be directly related to the election campaign.²⁸ In addition

²⁷ United Nations General Assembly Resolution A/55/L.2, September 8, 2000, para. 5.

²⁸ "Monitoring of Intimidation and Violence: Report, 10-17 July 1998, Special Representative of the United Nations Secretary-General for Human Rights in Cambodia, July 18, 1999, cited in National Democratic

to more than 100 killings during the 1997 coup and its aftermath, there were a reported 22 "political killings" in the four months before the July 26, 1998 national elections, according to a COHCHR analyst in 2002.²⁹

On July 28, 1998, two days after election day, NDI and IRI called again for the government "to prevent intimidation and punish those who engage in it." In a statement on August 10, Human Rights Watch documented many such incidents and "called on the international community to exert pressure on Hun Sen to disarm and punish the perpetrators of the latest incidents of attacks on opposition party members so that Cambodians could freely exercise their rights to freedom of expression, association, and assembly." In a second post-election statement issued on August 22, four weeks after election day, NDI reported that "directly following the election there were numerous complaints of threatened violence toward local opposition party activists throughout Cambodia."

After the elections, the Third Committee of the UN General Assembly adopted a resolution on November 18, 1998, that "call[ed] upon the Government of Cambodia to investigate urgently and prosecute, in accordance with due process of the law and international standards relating to human rights, all those who have perpetrated human rights violations."³⁰ The resolution also "express[ed] grave concern at the situation of impunity in Cambodia and stress[ed] that . . . bringing to justice those responsible for human rights violations . . . remains a matter of critical and urgent priority."³¹ Nevertheless, none of the reported murders was adequately investigated and none of the identified perpetrators was prosecuted, either at the time or since.

Impartiality of Election Authorities

Another prominent theme emerging from the domestic and international commentary on the elections was the need to establish impartial, independent election authorities to guarantee the overall credibility of the elections. While UNTAC had administered the 1993 elections, the formation of the NEC in 1998 was widely viewed as a key test of the government's capacity and commitment to organize and administer fair elections on its own. The election law provided that the NEC would have 11 members, including one representative from each political party represented in parliament (the CPP, FUNCINPEC, the Buddhist Liberal Democratic Party or BLDP and Molinaka) and a representative of the NGO community. Members of the 11-person NEC were selected in January 1998 while opposition leaders remained out of the country.

Domestic and international organizations criticized the process at the time. A joint

Institute for International Affairs, "The July 26, 1998 Cambodian National Assembly Elections," 1999, p. 34.

²⁹ Matt McKinney, "UN Report Sharply Criticizes Election Violence," *Cambodia Daily*, January 16, 2002, p.1.

³⁰ United Nations General Assembly, Third Committee, A/C.3/53/L.39, November 18, 1998, para. 10.

³¹ *Ibid*, para. 11.

NDI-IRI report on January 30, 1998, criticized the government for a selection process that "failed to result in a broadly representative commission." As the report pointed out, the Council of Ministers selected only the names put forward by pro-CPP factions within FUNCINPEC and BLDP (which had splintered from the original parties in 1997) instead of legitimate party nominees. Similarly, there was substantial evidence that the selection of the representative for the NGOs, who was known to have strong connections to the CPP, was brought about through vote buying and coercion. In a series of joint statements issued in January 1998, the domestic election monitoring organizations COMFREL and COFFEL unsuccessfully called on the government to re-examine the composition of the NEC.

On the day before the elections, COMFREL cited the lack of NEC independence as a major cause of delays in the investigation and prosecution of political killings, the nominations of predominantly CPP-affiliated officials to the provincial election committees (PECs) and commune election committees (CECs), and of the rapid accreditation of thousands of untrained local observers from organizations with known links to the CPP.³² Domestic and international observers uniformly expressed the need to establish independent electoral authorities to prevent future elections from being similarly and thoroughly flawed.

More Cohesive International Response

Another well-recognized problem in 1998 was the lack of a cohesive international approach to the elections. In addition to the split among donors over whether and how to fund the election process, election observers also failed to agree on how to assess the process, and their statements reflected divergent approaches. The Joint International Observer Group (JIOG), which was supported by the UN and headed by the chief EU observer, sought to offer a consensus statement of international observers. On the day after election day, even before the counting was complete, the JIOG fully endorsed the election, calling the process "free and fair to an extent that enables it to reflect, in a credible way, the will of the Cambodian people."³³ Although the EU was fully engaged in the JIOG, an EU delegation led by Member of the European Parliament Glenys Kinnock offered a more critical analysis two days later, citing problems with harassment, impunity, human rights abuses and concerns about counting. The principal American groups, NDI and IRI, did not participate in the JIOG process; echoing their pre-election statement, the statement of the joint NDI-IRI delegation was positive about election day but critical of the overall process: ". . . [T]he relative success of the balloting and counting thus far cannot negate the violence, extensive intimidation, unfair media access and ruling party control of the administrative machinery that characterized the pre-election process."³⁴

Because of the widely held sense that the international community had failed to agree on and implement a coherent approach, the UN organized a "lessons learned" meeting

³² Pre-Election Assessment Statement, COMFREL, July 24, 1998.

³³ Joint International Observer Group Press Release, July 27, 1998.

³⁴ "Preliminary Statement of the IRI-NDI Delegation to the July 26, 1998 Elections in Cambodia," July 28, 1998.

in New York in the fall of 1998 for all its agency heads from Phnom Penh and others involved in the JIOG and other monitoring efforts. Largely because of the Cambodian experience, the UN changed its criteria for coordinating election monitors in the absence of a UN mandate, and the UN and others in the international community made recommendations about how to improve international coordination in future elections around the world.

Other Specific Recommendations

Donors, diplomats and international organizations involved in the 1998 elections made a number of other recommendations. These included reconstituting the NEC and the Constitutional Council, involving all parties and NGOs in the process of election reform, improving the fairness of news coverage of political parties in the broadcast media, improving parties' access to the media, making the election rules clear in advance, ensuring the prompt and fair treatment for election-related complaints, and, presuming the absence of fraud, ensuring respect for the election results.

Conclusion

Despite these well-documented shortcomings, and the many recommendations which were widely shared by international and domestic observer groups in 1998, the commune election process in 2002 suffered many of the same flaws as had marred the national elections in 1998. NDI strongly encourages international donors and NGOs, domestic civic groups, political parties, the NEC as well as representatives of the Cambodian government to review systematically the myriad recommendations that have been made and implement reforms needed to ensure a credible, fair and efficient electoral process.

B. "Top Political Leaders Support Individual Candidates, Women's Participation, NEC Reform," Joint Statement by COMFREL, COFFEL and NICFEC, May 18, 2000

COFFEL - COMFREL - NICFEC

(REVISED VERSION, 18 May 2000)

TOP POLITICAL LEADERS SUPPORT INDIVIDUAL CANDIDATES,

WOMEN'S PARTICIPATION, NEC REFORM

COFFEL, COMFREL and NICFEC are pleased to report broad agreement among Cambodia's three main political leaders on key points concerning the legal framework of the coming commune council elections. The three organisations now call for intensified dialogue with key officials and other stakeholders on the best means of implementing these points of broad agreement and for the National Assembly to draft and deliberate a new law specifically governing the establishment and role of the National Election Committee (NEC).

A delegation representing the three election monitoring organisations met with Prime Minister Hun Sen on 28 March, H.E. Sam Rainsy on 31 March and H.R.H. Prince Norodom Ranariddh on 25 April 2000. Following these, delegations met with Co-Minister for Interior H.E. You Hockry on 28 April 2000 and Deputy Prime Minister/Co-Minister for Interior H.E. Sar Kheng on 9 May 2000.

During these meetings, the delegation discussed three issues of concern related to the upcoming commune council elections: (1) voting for individual candidates; (2) women's participation and representation; and (3) reform of the NEC.

All three leaders agreed on the desirability of voting for individual candidates instead of party or candidate lists. However, Hun Sen, while personally much in favour of voting for individual candidates, expressed some reservations because of doubts as to how it could be implemented in technical terms. Sam Rainsy gave his full support, adding that voting for individual candidates would best represent the wishes of the Cambodian people and reduce party political influences on commune/sangkat administration. Prince Ranariddh, although initially unsure about the merits of this form of voting, listened to the reasons put forward by the delegation and decided in his personal capacity to give the proposal his support.

The two Co-Ministers for Interior did not reject the proposal for voting for individual candidates, explaining that changes could be made in the electoral system in the draft law but that the decision to do so would have to come from political leaders, the government and the National Assembly. They added that it would take about six months for changes in the electoral system to be incorporated into the existing draft commune council election law.

Concerning women's participation, the three leaders agreed on the principle that women deserved proper representation in keeping with their democratic rights and greater women's participation was needed. Some differences emerged over how this should be achieved.

Hun Sen indicated his disagreement with a proposal for a 30% quota system for representation of women. While citing constitutional provisions for equality between men and women that forbid discriminatory measures, he also insisted that 30% was not enough; women have the right to 40% or 50% participation.

Sam Rainsy expressed reservations concerning a quota for women on the grounds that women appointed as candidates simply to fill a quota may provide ineffective representation. Like Hun Sen, he favoured capacity building and other measures to encourage women to run as candidates and become elected as commune council members. Both Sam Rainsy and Prince Ranariddh supported the delegation's proposal for listing of men and women candidates separately on ballot papers that would enable women to vote more easily for women candidates, while Hun Sen acknowledged that the idea merited consideration.

H.E. Sar Kheng expressed strong support for clear provisions on women's participation to be included in the draft law. H.E. You Hockry agreed on the principle of women's participation but added his concern over possible difficulties in selecting women candidates.

On the issue of NEC reform, again there was broad agreement in principle. Prince Ranariddh and Sam Rainsy came out with unequivocal support for immediate restructuring of the NEC to provide more credible assurance of neutrality and independence. Hun Sen came out in clear support of the NEC's role as a neutral "umpire" and acknowledged the need for reform of the body. However, he said that the restructuring of the NEC would have to wait until 2003 because of the five-year mandate for NEC members stipulated in the election law. Despite this, Hun Sen strongly supported a review of the composition of the Provincial and Commune Election Commissions so that these lower-level electoral authorities could demonstrate improved neutrality in the administering of elections.

H.E. Sar Kheng indicated that restructuring of the NEC could present difficulties, although reform was necessary for better performance. He added that the NEC could become decentralised at some point in the future.

Responding to the request of the delegation for opportunity for consultation on the two draft laws on commune administration and commune council elections, Prince Ranariddh spoke strongly in favour of opening the process for drafting legislation to civil society to allow recommendations to be contributed in advance of deliberations by the National Assembly. This, he affirmed, would help significantly to improve the quality of legislation passed by the body.

With leading political and government figures in Cambodia having expressed broad agreement on three key issues concerning the commune council elections, Coifel, Com-el and Nicfec now call for the following:

1. Deletion of the provisions in the draft Commune Administration Law stipulating the use of proportional representation for the commune council elections.

2. Dialogue involving key government representatives, election monitoring organisations and other members of civil society to discuss the technical aspects of incorporating a system for voting for individual candidates and women's participation into the legal framework for the commune council elections.
3. Consultations between the Ministry of Interior and civil society concerning the draft Commune Council Election Law, following the successful example of cooperation between government and civil society in the drafting of the new Land Law.
4. A new law to replace the articles establishing the NEC in the 1997 election law, setting out specific provisions for the independence of the NEC as a neutral, nonpartisan body responsible for the management of national, commune and other elections in Cambodia. This law should include transparent procedures for the appointment of members and their replacement when necessary in the public interest.

1. Introduction of public consultation as a standard procedure for all draft laws, allowing concerned organisations and other members of the public to study a draft law and contribute recommendations in advance of deliberation by the Council of Ministers and the National Assembly.

- C. "Deliberation of the Commune Council Election Law by the National Assembly,"
Joint Statement by COMFREL, COFFEL and NICFEC, January 15, 2001

Joint Statement on Deliberation of the Commune Council Election Law by the National Assembly

Comfrel, Coffel and Nicfec, Cambodia's three internationally-recognized election monitoring organizations (EMOs), are greatly pleased by the important step forward by the National Assembly in passing the Commune Administration Law and the commencement of deliberations of the Commune Council Election Law.

While recognising the importance of the current deliberations, the three EMOs share strong concerns over some articles of the draft Commune Council Election Law and call upon all members of National Assembly to give careful attention to the following issues.

1. *Right of Local Citizen Groups to Contest as Candidates*

Comfrel, Coffel and Nicfec call on parliamentarians to provide opportunity to independent local citizen groups to compete in the commune council elections alongside existing nationally registered political parties.

Over five million of Cambodia's 12 million population are eligible voters. More than three million of these voters are members of various political parties, leaving nearly two million non-party members who under the current draft of the law do not have the right to be registered on a list of candidates for an election. These citizens should be permitted the option of forming their own local groups to participate as candidates in the commune council elections without any prior requirement to join a national political party.

Such local citizen groups should be exempted from the requirements for registration as national political parties, in particular given the large sum of money required for party registration that is beyond the financial resources of grassroots people.

2. *Reform of NEC*

Reform of the NEC is seen as critical to establishing the authority and credible neutrality of the body as umpire in an electoral contest. In this regard, the NEC should be downsized to five independent members of high standing. This reform would contribute significantly towards ensuring a free and fair election.

Failure to establish credible neutrality of the NEC prior to the 1998 election was a key factor leading to the prolonged post-election conflict that brought the nation to the brink of a constitutional crisis. Any future elections will require the NEC not only to be technically capable of carrying out an election, but also to command the respect of all participants in the election process.

3. *Co-ordinating Committee for NGOs*

Coffel, Comfrel and Nicfec stand firmly by their position that articles 150 to 158 in chapter 9 of the draft Commune Council Election Law, referring to the establishment of a co-ordinating committee for NGOs participating in the observation of the elections, should be deleted. This position is based on the following reasoning:

a) A coordinating committee established under articles 150 to 158 of the Commune Council Election Law is likely to be dominated by NEC and therefore lack the independence vital to neutral monitoring.

b) During the 1998 election, the NEC and the three EMOs were able to maintain adequate co-operation. Accordingly, there is no need for a new NGO co-ordinating committee for election observation. From the viewpoint of the EMOs, the establishment of the co-ordinating committee is likely to create new problems, particularly if committee members are appointed from outside the EMOs and lack experience in election issues.

For more information, please contact:

Thun Saray
First Representative, Cornfrel
Tel: 016 - 880 509

Chea Vannath
President, Coffel
Tel: 015 - 831 905

Kek Galabru
President, Nicfec
Tel: 012 - 802 506

D. National Election Committee Members

LIST OF NEC MEMBERS

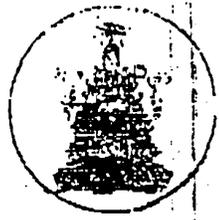
No.	Name	Rank	Nominated by	Permanent Sub-Committee
1	H.E. CHHENG, Phon	Chairman	National Assembly Executive Committee	
2	H.E. KASSIE, Neou	Vice Chairman	National Assembly Executive Committee	
3	H.E. DO, Kong Nguon	Member	*Citizen Representative	Administration
4	H.E. YOU, Kan	Member	*Citizen Representative	Training and Civic Education
5	H.E. OUNG, Kheng	Member	**FCP Representative	Legal Service and Controversy
6	H.E. PRUM, Nhean Vicheth	Member	**CPP Representative	Media
7	H.E. KOUY, Bunroeun	Member	**SRP Representative	Logistics
8	H.E. CHHANG, Kim Eng	Member	**MOLINAKA	Operation and Computer Center
9	H.E. TIP, Janvibol	Member	*H.E. You Hokry	Security
10	H.E. CHHAY, Kim	Member	*H.E. Sar Kheng	Finance
11	H.E. CHEA, Chamroeun	Member	***NGO Representative	Inspection and Monitoring

Note:

* Nominated by the Ministry of Interior, approved by the Council of Ministers and appointed by the National Assembly.

** Nominated by the political parties and appointed by the National Assembly.

E. Statement of the Spokesman of the Ministry of Interior Regarding Politically
Motivated Crime, February 6, 2002



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

219-107

STATEMENT OF SPOKESMAN
OF MINISTRY OF INTERIOR

In general the commune council election, which was conducted on Sunday 3 February 2002, went with fair, free, justice and no violence and it is part of the history for all Cambodian. Enormous participation by voters throughout the country in this important event, on the one hand, shows efforts of Cambodian people in partaking and supporting the Cambodian government's decentralization policy. On the another hand, it reveals mutual understanding in the Cambodian society.

But at the same time, the Ministry of Interior extremely regrets that for the last few days, a number of local and international media were reporting misleading information of crimes such as robbery, traffic accident and other ailments causing deaths, and more importantly the case Mr. Ban Bon taking his own life by distorting that these crimes were politically motivated. The Ministry of Interior would like to make clear that according to inquires conducted by experts and the testimony of relatives of the deceased about the death of Ban Bon, 37 of age, lives in Tapich village, Kraing Yov Commune, Saang District, Kandal Province (a member of Sam Rainsy Party) who hang himself on 2 February 2002 and his body was buried by his wife, was clearly a case of suicide. To clarify this question, local authorities have also requested to conduct forensic analysis of the body but the wife and relatives of the deceased refused and asserted that her husband did commit suicide by hanging himself because of family quarrel.

The Ministry of Interior has the honor to announce that, since before the beginning of the electoral campaign until the present, there has been no politically motivated crime. On the contrary, authorities have thoroughly conducted inquiries and investigated crimes and arrested criminals to be sentenced by the court except a murder and an armed robbery case in Kampong Cham where authorities have yet to apprehend the criminal(s). However, Ministry of Interior has issued a firm order to competent authorities in the area to investigate and arrest suspects, through court warrants, who are involved in both cases.

Ministry of Interior considers all baseless accusations and propaganda as an intention to ruin political environment, national security and discrediting the will and right of determination by millions of Cambodian voters.

Phnom Penh, 6 February 2002

F. National Election Committee Directive on Regular Meetings for Strengthening Security, December 11, 2001

**Kingdom of Cambodia
Nation Religion King**

**National Election Committee
No 12.1154/01 NEC**

**DIRECTIVE
ON REGULAR MEETINGS FOR STRENGTHENING
THE SECURITY FROM NOW UNTIL THE ELECTION**

To prevent and settle all the cases that could happen before and after the election campaign between the local authorities and political parties as well as to promote the better understanding from political parties in their participation of this coming elections, the National Election Committee is promulgated this DIRECTIVE to all the Provincial Election Committees to have a meeting each two week or when required with following composition:

- | | |
|---|----------------------------|
| 1. Chairman of PEC | Chairperson of the meeting |
| 2. Provincial Security Subcommittee | Member |
| 3. Representative of all Political Parties
taking part in the Commune Election | |
| 5. Electoral Monitoring Organizations
and NGOs Observing the Election | Member |
| 5. Human Right Representatives | Member |
| 6. Local and International Observers | Member |

Upon reception of this DIRECTIVE, the Chairman of Provincial Election Committee should take immediate action for its effective implementation.

Phnom Penh, date: 11 December 2001
On behalf, National Election Committee
Chairman

G. National Election Committee Instruction on the Procedures of Hearings to Punish Offenders, November 4, 2001

**Kingdom of Cambodia
Nation Religion King**

**National Election Committee
No 12.1136/01 NEC**

**INSTRUCTION
ON
THE PROCEDURES OF HEARING TO PUNISH OFFENDERS VIOLATING THE LAW ON
THE ELECTIONS OF COMMUNE/SANGKAT COUNCILS**

Pursuant to the Law on the Elections of Commune/Sangkat Councils and Chapter 16 of the regulations and procedures of NEC for the elections of commune/sangkat councils, in particular, the provisions of points 16.3.3 and 16.3.4, which give powers to NEC, PECs and CECs to hold a hearing to punish offenders of the electoral law and in order to ensure the effectiveness of the hearing process, safety, security, public order before and after the elections as well as to ensure the normal, free and fair the elections.

The National Election Committee

Wishes to instruct the electoral commissions at all levels as follows:

I. Dealing with complaints

When receiving a complaint related to an offence as stated in the electoral law and point 16.3.4 of the regulations and procedures of NEC for the elections of commune/sangkat councils, an appointed official of NEC or a secretary of PECs or CECs shall ask for the information on identifications of the complainant or the representative to fill in the complaint form, set out the time, date and place where a hearing shall be held and report immediately to NEC.

The hearing, which relates to the punishments as stated in the Law on the Elections of Commune/Sangkat Councils and regulations and procedures of NEC, shall follow the procedures of argumentative hearing (point 16.2.12).

An adjudicating council of each level, acting on behalf of the election committee or commission at its level, shall have powers to summon parties concerned and witnesses to make clarifications during the hearing, to decide and to take actions against any one who does not respect this order in accordance with the law on organization and functioning of the court and the procedures in force (point 16.2.16).

Each council shall make a judgment based on the spirit of law and procedures by adhering to the stance of independence, impartiality, justice and honesty in enforcing its powers and duties.

II. Interventions of NEC and cooperating obligation of public authorities

At all stages of the procedures set in point I above, the adjudicating council of each

level may request for legal advice from NEC through the Department of Legal Services and Litigation at all times.

When encountering with difficulties during the hearing process, for instance, the defendant of a case-file is the powerful, or the influential or an agent of the armed force, the adjudicating council of each level shall request for the cooperation from the authorities at all levels, responsible for security, public order and other works, which are obliged to provide such cooperation and report immediately to NEC through the Department of Legal Services and Litigation so that NEC is able to take action accordingly to ensure that the process of hearing is conducted normally and effectively (each council shall abide by Article 17).

III. Types of Punishment and court proceeding to punish offender to prison terms

According to provisions of Chapter 16 of the Law on the Elections of Commune/ Sangkat Councils and point 16.3.1.2 of the regulations and procedures of NEC, the adjudicating council of each level shall have the right to make decision on punishment in accordance with the seriousness of an offence ranging from administrative punishments such as reprimand, warning, work suspension, leaving without pay, dismissal, confiscation of voter card, deprivation of right to stand as a candidate, to a fine ranging from 5 to 50 million Riels.

Aside from the above punishments, the adjudicating council of each level shall refer offenders to an adjudicating court regarding the imprisonment of the offenders under the provisions of Article 64 of the transitional criminal code, which is currently applied in the Kingdom of Cambodia. According to the provisions of Article 64, any person, by means of threat, physical abuse, any form of coercion either affecting the free conduct of the right to vote and to stand as a candidate or the proper operation of elections, shall be charged with election fraud and punished to a prison term ranging from one to three years.

Upon receiving this instruction, the Chairmen of all PECs and CECs are requested to make a broad dissemination of and implement this instruction with high effectiveness.

**Phnom Penh, 4 November 2001
For the National Election Committee**

H. National Election Committee Voter Education Regulation

CHAPTER 8

ELECTORAL CAMPAIGN

8.9 Local non-governmental organization (s) or association (s) and international association (s) or organization (s) operating in the Kingdom of Cambodia, which want to disseminate of electoral education to the public shall be first approved by the NEC.

8.9.1 The NEC shall create a sub-mission in charge of examination documents that involves with public education for the Commune-Sangkat Council Election. The composition of sub-commission consists of:

1. Chairman of permanent standing sub-committee in charge of information and Media as the President
2. Chairman of permanent sub-committee of public education training as Vice-President
3. Secretary General as Member
4. On official of Public Information Office as Member
5. One official of Department of Training and Public Education as Member

8.9.2 Documents needed to be examined are:

- 8.9.2.1 Video shows;
- 8.9.2.2 Tape recorder;
- 8.9.2.3 Leaflets;
- 8.9.2.4 Books;
- 8.9.2.5 Texts and pictures published in newspapers
- 8.9.2.6 Pictures or slogans published on T-shirts or hats ...etc.

8.9.3 All documents set forth 8.9.2 above shall be retained two copies each within the NEC for a file.

Unofficial Translation by STAR Kampuchea

- I. National Election Committee Voter Education Regulation,
amended July 25, 2001

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

**NATIONAL ELECTION COMMITTEE
N°: 07-529/01 NEC**

**AMENDMENT OF CHAPTER 8 OF THE REGULATIONS AND
PROCEDURES OF NEC FOR THE 2000 COMMUNESISANGKATS
COUNCIL ELECTION 3**

REFERENCE: - As per request from local association (s), non-governmental organization (s) and other international organization (s) operating in the Kingdom of Cambodia
- Decision of the NEC Meeting on July 23, 2001

**NATIONAL ELECTION COMMITTEE
Herby Decides**

The amendment to the points related to dissemination of public education in Chapter 8 of the regulations and procedures of the Commune-Sangkat Council Election, which have the following significances:

DISSEMINATION OF VOTER EDUCATION

8.9

Local association (s) or non-governmental organization (s), association (s) and international organization(s) performing duties in the Kingdom of Cambodia to educate elections to the public shall automatically supervise by themselves and shall be responsible before the law for technical significances related to the Commune-Sangkat Council Election.

8.9.1 Technical mistakes shall be determined as stipulated in the law, regulations, procedures and other instructions of NEC for the Commune-Sangkat Council Election. Technical mistakes shall be determined as follows:

8.9.1.1 Making up confusion to the public of the Election.

8.9.1.2 Creating the public into panic or turmoil in the organization of the election.

8.9.1.3 Disturbing the election process.

8.9.1.4 Destroying order in the election.

8.9.1.5 Misleading the public into misunderstanding the calendars of NEC on the functioning of the process of the Commune-Sangkat Council Election.

8.9.2 The institutions as set forth in 8.9, of which disseminations were contrary to 8.9.1.1 shall be condemned as stipulated in the penalty of the Law on the Commune -Sangkat Council Election.

8.9.3 Local non-governmental organization (s) or association (s) and international organization (s) or association (s) operating in the Kingdom of Cambodia and acting to educate elections to the public may request the National Election Committee to monitor and recommend on the education materials for all activities.

8.9.3.1 NEC shall create a sub-mission to be in charge of examination and providing recommendations on the education materials for the activities of the Commune-Sangkat Council Election. The composition consists of as follows:

1. Chairman of permanent standing sub-committee in charge of information and Media as the President
2. Chairman of permanent standing sub-committee in charge of training and public education Vice-President

3. Secretary General Member
4. Chairman of public information office Member
5. Chairman of Department of training and public education Member

8.9.4 Materials to be examined by the National Election Committee upon request are:

- 8.9.1.1 Video shows;
- 8.9.1.2 Tape recorder;
- 8.9.1.3 Leaflets;
- 8.9.1.4 Books;
- 8.9.1.5 Texts and pictures published in newspapers;
- 8.9.1.6 Pictures or slogans published on T-shirts, hats ...etc.

8.9.5 All materials set forth in 8.9.4 shall be retained one copy each within NEC for a file.

Substitute, National Election Committee
CHAIRMAN
Sign and Seal
PHRET THEA CHAR CHHENG PHUN

**Unofficial translation by Legislative
Development Program of STAR Kampuchea**

J. COMFREL Press Release on PEC and CEC Monitoring Role Regarding Voter Education Materials During the Election Campaign, January 14, 2002

Committee for Free and Fair Elections in Cambodia

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P.O.Box 1145, Phnom Penh;
e-mail comfrel@bigpond.com.kh
Site: <http://www.bigpond.com.kh/users/comfrel>

14 January 2002

PRESS RELEASE

Need Clarification of PEG and CEC Monitoring Role

Regarding NGO's Voter Education Materials During Election Campaign

National Election Committee (NEC) has recently issued a guideline instructing its PEC and CEC officials to monitor voter education materials before giving permission to election organizations.

With reference to the NEC guideline dated 29 December 2001, Comfrel has sent a letter on 9 January 2002 to NEC to solicit NEC to explain PEC and CEC's competence in checking voter education materials.

Provisions 8.9 and 8.9.3 of amended chapter 8 of the Regulations and Procedures for commune council election describes rights of local and international associations/organizations involved in voter education. These associations and/or organizations shall be responsible for the content of such education materials. NEC can be asked to comment on the produced materials. However, this does not mean that permission from NEC is required before the materials can be used.

Comfrel and other Election Monitoring Organizations have experienced significant difficulties resulting from this. For example, in Rattanakiri and Sihanouk Ville PEC/CEC blocked the distribution of a Comfrel's poster showing the negative impact of vote buying and demanded that Comfrel seeks permission for all future education materials. In addition, Sihanouk Ville PEC chief rejects the distribution of the Mirror Bulletin (The Kanychok Sangkum) of Open Forum licensed by Ministry of Interior, and demands to check the Mirror before distribution.

Comfrel is strongly concerned that control attempts by PEC and CEC to control voter education materials will negatively impact on voter education for the upcoming commune council election. We demand that NEC nullify its guideline which is not in accordance with amended provisions 8.9 and 8.9.3.

[End]

K. National Election Committee Directive on PEC Review of Voter Education
Material, December 29, 2001

Directive

Due to necessary situation and as needed for during the electoral campaign, the National Election Committee instructs to chairpersons of provincial-municipal election commissions to form a commission to review spots and documents in the province and municipality by applying the following principles.

- I. Composition of the Reviewing Commission comprises:
 - Chairperson of PEC is the chief of the Commission on Reviewing Spots and Documents;
 - Deputy chairperson of PEC is the deputy chief of the commission;
 - Member in charge of education;
 - Member in charge of Operation;
 - Member in charge of Legal Service.
2. Documents to be reviewed:
 - Video tape
 - Cassettes or audio tapes
 - Leaflets
 - Books
 - Texts or pictures printed on newspapers
 - Pictures or slogans printed on T-shirt, hats, etc.
3. Use of budget
 - Shall fred equipment for reviewing from the Reviewing Commission.
 - If not, shall rent from the public in the amount of 5,000 riel per spot and each spot shall not last more than 15 minutes.
4. The owner of the reviewed spot shall make 2 copies, which one copy be given to the Reviewing Commission and for documentation.
5. The chief of the Reviewing Commission shall issue a visa to the spot's owner, in order to broadcast as in the attached sample.
6. If it was found against the law and procedures on commune council election, the spot shall be returned to the owner to rectify it and be resubmitted for review within 36 hours.

7. At the end of the elections, all reviewed documents shall be preserved at the Sub-commission in charge of reviewing documents of the NEC.

In order to make this process goes smoothly, the Commission in Charge of Reviewing Spots and Documents is instructed to instruct to domestic organizations or non-governmental organizations and associations or international organizations, which have their mission in the Kingdom of Cambodia to comply with the Election Campaign Manual of NEC, Chapter VIII, point 8.9 to 8.9.5.

Upon receiving this directive, chairpersons of all election commissions shall appoint compositions and shall call for a meeting with political parties and NGO in their respective province, in order widely disseminate it.

National Election Committee
Chairman
Signed and sealed: Chheng Phon



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

លក្ខខណ្ឌនៃការងារតំរូវបំណងការងារ

១- សមាជិកគណៈកម្មការត្រួតពិនិត្យមាន :

- ប្រធានគណៈកម្មការត្រួតពិនិត្យស្បៀង និងឯកសារ (ប្រធាន PEC)
- អនុប្រធានគណៈកម្មការត្រួតពិនិត្យស្បៀង និងឯកសារ (អនុប្រធាន PEC)
- សមាជិកទទួលបន្ទុកអប់រំ
- សមាជិកទទួលបន្ទុកប្រតិបត្តិការ
- សមាជិកទទួលបន្ទុកសេវាកម្មច្បាប់

២- ឯកសារត្រូវត្រួតពិនិត្យរួមមាន :

- កាស្បែកវីដេអូ
- កាស្បែកម៉ាញ៉េ ឬ ខ្សែអាត់សម្លេង
- ខ្លឹមសារផ្សេងៗ
- សៀវភៅ
- អត្ថបទ រូបភាព ចុះលើទំព័រសារពត៌មាន
- រូបភាព ឬ ពាក្យស្លោកបោះពុម្ពលើអារឃីត មួក.....

៣- ការប្រើប្រាស់ថវិកា

- ត្រូវរកឧបករណ៍សម្រាប់ត្រួតពិនិត្យពីក្នុងសមាជិកគណៈកម្មការត្រួតពិនិត្យ
- ប្រសិនបើគ្មានត្រូវជួលតាមទីណាណាម្នាក់ ក្នុង ១ ស្បៀង តម្លៃ ក្រោម ៥០០០រៀល ហើយក្នុង ១ ស្បៀងមិន អោយលើសពី ១៥ នាទី ។

៤- រាល់ស្បៀងដែលបានត្រួតពិនិត្យ ត្រូវអោយម្ចាស់ស្បៀង ចម្លង ០១ ច្បាប់ ជូនគណៈកម្មការត្រួតពិនិត្យស្បៀង និង ឯកសារ ដើម្បីរក្សាទុកជាឯកសារ ។

L. National Election Committee Letter to NDI Regarding Candidate Debate Programs, December 27, 2001

Unofficial Translation by NDI

12/12/01

Kingdom of Cambodia
Nation, Religion, King

National Election Committee
No.: 12.1259/01 NEC

December 27, 2001

To
National Democratic Institute for International Affairs

Subject: Organization of "Candidate Debate" Programs

Reference: - Article 126, Chapter 8 of the Law on Commune Council Election
- NDI letter, dated December 20, 2001

In reference to the above-mentioned subject and reference, the National Election Committee would like to inform the Resident Representative of the National Democratic Institute for International Affairs that in principle the NEC has agreed on the process within the framework of the Law on Commune/Sangkat Council Election and decided as follows:

1. National Election Committee will designate a representative to participate;
2. If NDI goes any province or municipality, it should notify PEC and CEC so that it designates a representative to participate;
3. For broadcasting the "debates" through State-run-radio and television is not authorized.

As stated above, the National Election Committee hopes and believes that you, the Representative of NDI will take efforts to encourage the candidate debates to bring its real form during the upcoming period of electoral campaign.

Please accept the Resident Representative of NDI of our sincere consideration.

National Election Committee Chairperson
Signed and stamped
Chheng Phon

M. National Election Committee Press Release on Campaigning,
December 19, 2001

UNOFFICIAL TRANSLATION BY NDI

KINGDOM OF CAMBODIA

Nation Religion King

National Election Committee

Number: 12.129/01

Phnom Penh, December 19, 2001

The meeting between political party's representatives and NGOs held on December 18, 2001, at the Conference Room of NEC General-Secretariat. The meeting mainly focused to the discussion *on organizing of forum for broadcast on radio and TV during electoral campaign period for commune council election.*

Presented in the meeting were; His Excellency Prum Nheanh Vicheth, chairman of Permanent Sub-commission in charge of Media, Mr. Leng Sochea, Director of Public Information Bureau, 8 representatives from political parties, CPP, FCP, SRP, KIP, KDP, CWP, VKMP, KAP and representatives of NGOs, such as Women for Prosperity, Nicfec, Comfrel and NGO Coordination Committee.

During the meeting, Mr. Leng Sochea informed the 8 representatives from political parties and NGOs who were in attendance that NEC will publish a bulletin, titled "NEC Information Bulletin" in the near future, in order to disseminate information and activities relating to the commune council election. The bulletin will allow 8 registered political parties to make and print texts for voter education during the commune council election. The bulletin will print 3,000 copies. He stated that this bulletin will be released very soon and be distributed to 8 political parties, NGOs and the public so that they also can learn about the NEC information.

During the meeting, political party's representatives and NGOs discussed in great detail about the role of the media during the electoral campaign, in order to seek a common principle towards attaining these results. The forthcoming electoral campaign of political parties, State-run television will provide 70 minutes per day to be distributed to 8 political parties, in order them to disseminate their political platforms. National Election Committee and NGOs will moderate this program.

Also during this meeting, Nicfec will create a program on "Voters Education"; Women for Prosperity will create two programs on "Roles of Women in Political Party" and "Discrimination in the Election Process"; the NGO Coordination Committee will create two programs on "Electoral Campaign of Political Parties" and "Prevention of Violence and Threats during Electoral Campaign Process". As for Comfrel will be responsible for the remaining programs.

គណៈកម្មាធិការជាតិរៀបចំការបោះឆ្នោត

លេខ ១៤.១២១/០១ គ.ព.ស

ភ្នំពេញ ថ្ងៃទី ១១ ខែ ធ្នូ ឆ្នាំ ២០០១

សេចក្តីប្រកាសព័ត៌មាន



កិច្ចប្រជុំមួយជាមួយតំណាងគណបក្សនយោបាយ និង អង្គការក្រៅរដ្ឋាភិបាលបានប្រជុំនៅភ្នំពេញ ថ្ងៃទី ១៤ ខែ ធ្នូ ឆ្នាំ ២០០១ នៅសាលប្រជុំអគ្គលេខាធិការខ្មែរ គជប ។

កិច្ចប្រជុំនោះបានផ្តោតសំខាន់ទៅលើការពិភាក្សា ស្តីពីការរៀបចំវេទនាជ្រើសរើសក្រុមប្រឹក្សាយុវស្ម័យ និងការប្រើប្រាស់ការយោសាធារណៈឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាយុវស្ម័យ។

មានវត្តមានក្នុងកិច្ចប្រជុំនោះមាន ឯកឧត្តម ហ្វេង ឃ្លាណវិចិត្រ ប្រធានអគ្គលេខាធិការក្រុមប្រឹក្សាយុវស្ម័យ និងប្រធានកិច្ចការព័ត៌មាន លោក ឌុន សុខា ប្រធានការិយាល័យព័ត៌មានសាធារណៈ តំណាងគណបក្ស ០៨ គឺគណបក្ស ប្រជាជនកម្ពុជា , ហ៊ុនស៊ីនប៊ុច , សម រង្ស៊ី , ចំរើននិយមខ្មែរ , ប្រជាធិបតេយ្យខ្មែរ , ស្រ្តីកម្ពុជា , វង្សធម៌ របបហានគរ , ខ្មែរអង្គរ និង តំណាងអង្គការមាត អង្គការចំរើនស្ត្រី , Niefec, Comfrel និងគណៈកម្មាធិការសម្របសម្រួល គស ។

នៅក្នុងកិច្ចប្រជុំនោះលោក ឌុន សុខា បានថ្លែងប្រាប់ដល់តំណាងគណបក្សនយោបាយទាំង ០៥ ព្រមទាំង អង្គការ ដែលមានវត្តមាននៅទីនោះថា គជប នឹងចាប់ផ្តើមបោះឆ្នោតប្រើប្រាស់កិច្ចការព័ត៌មាន ដើម្បីជ្រើសរើសក្រុមប្រឹក្សាយុវស្ម័យ និងការប្រើប្រាស់ការយោសាធារណៈឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាយុវស្ម័យ។ លោកបានបញ្ជាក់ថា កិច្ចការព័ត៌មាននេះ នឹងចេញផ្សាយជាពិសេស ហើយត្រូវតែមាន ហើយត្រូវតែមាន និងអនុញ្ញាតឱ្យគណបក្សនយោបាយទាំង ០៨ ដែលបានចុះបញ្ជីបេក្ខជនប្រឈមអាចឆ្លើយតប អប់រំប្រជាពលរដ្ឋក្នុងការបោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាយុវស្ម័យ។ ចុះផ្សាយបានហើយ ត្រូវតែមានបោះឆ្នោតជ្រើសរើស ក្រុមប្រឹក្សាយុវស្ម័យលេខមានចំនួន ៣០០០ ច្បាប់។ លោកបានបញ្ជាក់ថា ត្រូវតែមាន និងចេញផ្សាយជាពិសេសនេះ និង ចែកជូនដល់គណបក្សនយោបាយទាំង ០៨ ព្រមទាំងអង្គការក្រៅរដ្ឋាភិបាល និងវិសាមញ្ញភាពនានា ដើម្បីឱ្យពួកគេបាន ដឹងព័ត៌មានរបស់ គជប ផងដែរ។

ក្នុងកិច្ចប្រជុំនោះ តំណាងគណបក្សនយោបាយ និងអង្គការបានពិភាក្សាគ្នាដល់អិតស្តិរពិភាក្សាទីប្រជុំជ្រើសរើសក្រុមប្រឹក្សាយុវស្ម័យ ការយោសាធារណៈឆ្នោត ដើម្បីកែតម្រូវការណ៍រួមមួយឈានទៅសម្រេចលទ្ធផលទាំងនោះ ។ ក្នុងដំណើរការយោសាធារណៈរបស់គណបក្សនយោបាយទាំងមុខនេះ ការយោសាធារណៈរបស់គណបក្សនយោបាយនៅលើកញ្ចក់ទូរទស្សន៍រដ្ឋ មានរយៈ ៧០ នាទី ក្នុងមួយថ្ងៃ ដើម្បីចែករំលែកវិទ្យុផ្សព្វផ្សាយពិគោលនយោបាយរបស់គណបក្សនីមួយៗ ដោយតំណាង គជប និង អង្គការក្រៅរដ្ឋាភិបាល ជាអ្នកសម្របសម្រួលកម្មវិធី ។

ក្នុងកិច្ចប្រជុំនោះអង្គការ Niefec និងបណ្តីកម្មវិធី ស្តីពីការរៀបចំវេទនាជ្រើសរើសក្រុមប្រឹក្សាយុវស្ម័យ ទីពីរ ក្រុមប្រឹក្សាយុវស្ម័យ ស្តីពីការយោសាធារណៈឆ្នោត គណៈកម្មាធិការសម្របសម្រួល គស បណ្តីកម្មវិធីទី ១ ទីមួយ ស្តីពីការយោសាធារណៈឆ្នោតរបស់គណបក្សនយោបាយ និងទីពីរ ការប្រើប្រាស់ការយោសាធារណៈឆ្នោត និងអង្គការ Comfrel និងវាប្រឆាំងវិសាមញ្ញភាពដែលនៅសល់ ។

ព័ត៌មានបន្ថែមសូមទំនាក់ទំនងអគ្គលេខាធិការខ្មែរ ភ្នំពេញ លេខ ០៤៣ ២១៤ ៣៧៨, ០១២ ៨៨៨ ០១៨

N. COMFREL Press Release Regarding Lack of Fair Election Campaign,
January 22, 2002

Committee for Free and Fair Elections in Cambodia

P.O.Box CCC 439; Phone: (023) 361 187 / 884 150 / 012 942 019; Fax: (855-23) 883 750 P.O.Box 1145, Phnom Penh; e-mail comfrel@bigpond.com.kh
Site: <http://www.bigpond.com.kh/users/comfrel>

Press Release

Lack of Fair Election Campaign if No Political Party Debate
(Cambodian Commune Election Uses Proportional System)

The commune electoral campaign began on January 18, 2002, with each political party registering to compete in the forthcoming commune election, scheduled for February 3. Each political party presented their political platforms and frameworks to the general public. During the electoral campaign, the citizens have heard only the voices of each political party from the streets and they do not know about the political party promises and clear messages for people.

Recently, the National Election Committee (NEC) did not make a clear decision whether to give permission to state-owned and private Radio and TV stations to broadcast a political party debate organized and sponsored by NGOs. All TV and Radio stations are reluctant to broadcast political debates, saying that they would broadcast the spot if they got permission from NEC.

The electoral campaign is so quiet for the citizens, most of them do not understand what the political parties will do if they win the election, who require the fundamental knowledge of local governance, development plan and human rights. Nowadays, as usual, the citizens need to watch and listen to political debates through TVs and Radios in order to improve their awareness and upgrade their effective participation and future local leaders' behavior. Furthermore as the concept of liberal democracy states, the citizens must be allowed to participate actively in the decision-making processes, particularly in the local and national elections.

Therefore, NEC should takes every effort so as to encourage the citizens to listen to the debates and try to make their own decision freely in stead of having their decisions overshadowed. The delay (5 days already) or refusal of the NEC to have debate program means that this institution does not make a favorable climate for the citizens and political parties to take part in positive and constructive activities for meaningful election.

COMFREL's mission is to help create an informed and favorable climate for free and fair election., through lobbying and advocacy for a suitable legal framework, education to inform voters of their, rights, rights and monitoring activities that both discourage irregularities and provide comprehensive monitoring data to enable an objective, non-partisan assessment of the election process.

Thanks

Media Comfrel

គណៈកម្មាធិការនាយកៈ
លោក ឈឹម សុខា
អ្នកស្រី ទីវ សារាយ៉េត
លោក ក្នុង សិទ្ធិ

តំណាងទី១ៈ
លោក យឹម ប៊ុំ
លោក សុក សំអឿន

លោក ធន សារាយ
លោក សិន សែត
លោក យង់ គឹមអេង

តំណាងទី២ៈ
អ្នកស្រី អ៊ុង ចាន់ថុល
លោក ស៊ុល វីនេត្រ

- O. Joint Statement on Voter Registration by COMFREL, COFFEL and NICFEC,
September 7, 2001

Comfrel Coffel Nicfec

Joint Statement on the Voter Registration

for the Commune Council Elections

(Unofficial translated by Comfrel)

Phnom Penh, September 07, 2001

According to the News Release of the National Election Committee on August 26, 2001, only 83.06% of about 6 million eligible voters had been registered for the commune council elections throughout the country. Therefore, approximately 1 million potential voters have not been registered. We note that the registration rate for this election is down 10%, if compared to the percentage of voters registered in the 1998 elections that was more than 90%.

However, we would like to acknowledge the NEC in its efforts for extending the voter registration period for an additional three days in some locations, even if this period was not responded to the demand of the three coalitions submitted to the NEC for at least two weeks extension. The number of registered voters during the extension period has increased only 2.2% (80.84% on August 21 and 83.04% on August 26).

Reason for Low Registration

Comfrel, Coffel and Nicfec have identified several factors that contributed to the lower voter registration, some clearly violations of the election law, but the majority related to poor organization and training, and a lack of time and materials.

- Inadequate voter education and training of election officials, primarily caused by lack of resources and the lateness of the finalization of regulations governing registration, but in some cases the result of unequal dissemination of information by politically affiliated PEC, CEC and RSO (Registration Station Officers) members;
- Because of confusion about the registration requirements, or for political reasons, many voter were not allowed to register on their normally scheduled registration days or at their local registration station;
- Inadequate quantities or late distribution of registration materials and equipment meant many registration stations opened late or closed early;
- Unanticipated increases in population, and difficult geography meant that in many places inadequate time was allocated for the registration process.
- Moreover, the commune council election is complex and more different than the national one. The initial requirement that voters had to register at their permanent residences made it difficult for students, workers, monks and others who have moved to the cities to continue and find the jobs. Although this requirement was removed midway through the registration process, and NGOs did their best to inform the people of the change, for many people did not hear in time, and others could not be bothered to try again.
- Small numbers of voters are not interested in or do not understand fully the importance of commune council election.

Irregularities and Violations

The report obtained from the nationwide COMFREL's networks at 10,647 stations which is equal to 86.10% of the NEC voter registration stations of 12,378) showed that 65.14% of the monitored voter registration stations (6,936 out of 10,647) ran smoothly with the minimum technical irregularities. (These figures are as of August 21, while the data from the reopened and new stations have not been aggregated yet). COMFREL found unacceptable problems at 29 stations. 7,477 cases of the technical irregularities were reported at the 3,711 voter registration stations (Many issues of these mentioned ones might have been happened in one station).

The technical irregularities and violations observed include:

- In 2,298 registration stations (21.60%) which information for voters about the location and schedule for registration centres and the 1998 voter list were not well publicised;
- At 598 stations (6.22%), 819 cases of threats or intimidation of voters took place;
- 2,754 cases of non-neutral behaviour by PEC, CEC or RSOs and failure of them to comply with correct procedures was reported at 2,558 stations (24.10%);
- There are 1,011 cases (at 1,011 stations equal 9.5%) of refusal the presence of observers and/or confiscation of observers' accreditation cards;
- 206 cases of 652 ineligible, unidentified, suspect and illegal immigrants were allowed to registered at 100 stations;
- In 275 stations, the form no. 1201 and 1202 (refusal and complaint forms) were not been provided to voters;
- There are 27 cases of voters who had registered more than once.
- There are 87 cases of confiscation voters' card by local authorities.

Referring to the report obtained from COFFEL networks in 16 provinces and municipalities, eligible voters in 1998 based on the News Release of the NEC are 5,771,635 eligible voters, while 4,846,635 voters were registered of which was equal to 84.55%. 11,446 registration stations were operated from July 21 to 27, 2001. COFFEL revealed irregularities of 5,052 cases (in one station the problem could be happened between one and five), including:

- 1,378 cases related to the shortage of registration materials and equipment,
- 1,722 cases of the improper performance by PEC, CEC and RSOs,
- 1,013 cases of improper performance by local authorities,
- 673 cases concerning the voters' nationality,
- 266 cases of corruption and threats.

According to NICFEC report from 1,244 communes in 171 districts which comprised 7,879 voter registration stations equal 63.66% of the NEC ones (on August 20, 2001), most irregularities had been emerged similarly to those findings by COMFREL and COFFEL with the additional issues as follows:

- Irregularities in the recruitment of PEC, CEC and RSOs in some areas resulted in corruption,

- The poor performance of many PEC, CEC and RSOs decreased voters overall confidence in the NEC;
- Some local authorities and political party activists interfered in the work of the registration station officers;
- Military and police officials in some areas were allowed to register more than once to increase the turnout of the registered voters.

The Coming Elections

Based on our observation of the registration process, Comfrel, Coifel and Nicfec still have serious concerns for the upcoming commune council elections. With the experience of the registration process in mind, we would like to submit some recommendations to NEC for improvement of the election process:

- Expand and intensify public voter education on all of the processes related to the commune council elections;
- Allow enough time and provide a clear schedule for each of the steps in the election process;
- Strengthen the neutrality and independence of NEC, PEC, CEC and RSO officials;
- Effectively resolve citizen's complaints both fairly and transparently;
- Effectively verify the voter list;
- Conduct more training courses for the electoral officers at all levels about their duties and responsibilities;

Finally, Comfrel, Coffel and Nicfec insist all political parties who participate in the upcoming commune council elections firmly respect the Law, Regulations and Procedures of NEC and do not use the violence and threats to solve their problems, and we appeal to the Royal Government to ensure order, security and safety for every commune council candidate, and for the whole electoral process.

For further information, please contact:

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Coffel: Mrs. Chea Vannath, Tel: 016 831 905

Nicfec: Mrs. Gek Galabru, Tel: 012 902 506

P. NICFEC Statement of Four Concerns, September 27, 2001

Neutral and Impartial Committee for Free and Fair Election in Cambodia
Non-Government Organization

NICFFEC

Phnom Penh, September 27, 2001

Statement of NICFFEC- Four Concerns

NICFFEC remains concerned about the problems discovered during the voter registration process as identified by the three Election Monitoring Organizations, comprised of COFFEL, COMFREL and NICFFEC. NICFFEC requests that the National ~, Election Commission take appropriate actions to resolve the problems, for which they have been given detailed information by the EMOs. The NEC should encourage authorities at all levels to extend good cooperation and to properly and transparently implement the Law on Commune-Sangkat Council Election.

In the meantime, NICFFEC has identified four new problems that we would like to bring to the attention of the NEC for further action and resolution. These problems include the following:

1. Voters being told to hand over their registration cards so they can be "counted," being forced to pledge their allegiance to the CPP, and being told that their ballots will not be secret.

NICFFEC received information from its networks from 7 provinces and municipalities where these problems were carefully recorded and government authorities and/or CPP agents have been identified as having carried out these activities. Information received from Takeo province, on the morning of September 26, 2001, the chief of Samrong village confiscated voter cards from people to verify their numbers. This village chief encouraged people to vote for the CPP. On August 11, 2001, reports show that in 19 villages in Chumras Pen commune of Samrong district, commune authorities forced voters to thumbprint and drink oath water as a pledge to vote for the CPP. Also in Takeo province, commune authorities forced 404 people living in Prey Sbat and Tasourn villages, Trapang Thom Khang Cheung commune in Tram Kak district to drink oath water at Mongkul Mean Leak pagoda as a pledge to vote for the CPP. Commune authorities have been collecting voter cards from people living at Anlung Snor commune, Ek Phnom district, Battambang with the clear intention to intimidate them to vote for the CPP.

Similar activities were also conducted in four other provinces, Prey veng, Putsat, Kampong Speu and Kandal. This is a violation of the Law on Commune-Sangkat Couccil Election, therefore, the NEC should encourage them to implement and respect the law. If there is no action taken to stop these kinds of activities, this will seriously affect the election process as well as the election results.

NICFFEC requests that the NEC take effective measures to solve problems at the locations where problems have been clearly reported and perpetrators have been identified.

2. Chapter VII Article 121 of the Law on Commune-Sangkat Council Election

NICFEC would like to request the NEC to make a clarification of Article 121 of the Law on Commune-Sangkat Council Election. NICFEC understands that "If an opposition has been agreed upon, the CEC shall reject the registration of that list of candidates of political party against which the opposition complaint was brought, then shall delete that candidate list, then revoke and rescind the letter of certification of the registration of that candidate list". It is reasonable that a candidate who was properly found to be ineligible be deleted from the list of candidates. However NICFEC believe that deleting the entire list of candidates would be a mistake imbedded in the election process. Therefore, the NEC should make clarifications of Article 121.

3. Nationality Issue

NICFEC notes with concern that different interpretations of election legislation and regulations regarding the nationality of voters were made by election commissions at all levels during the voter registration process. If no clear guidance ensuring the uniform and coherent interpretation of determining a candidate's nationality, similar problems may occur during the candidate registration process for Commune-Sangkat Council Election. NICFEC thinks that the NEC should issue clear guidance instructing election commissions at all levels on how to interpret the nationality issue. If there is no clarity, this issue may impede the candidate registration process.

4. Literacy Issue

NICFEC is also concerned with the literacy requirement for candidates for the Commune-Sangkat. NICFEC request that the NEC issue a guidance on how to consistently determine the criteria of this literacy test and fundamental principles for the determination of a candidate's literacy should be clearly defined.

In order to encourage the candidate registration process for Commune-Sangkat Council Election to be conducted in a free, fair, just, effective and transparent manner, NICFEC welcomes reports of any irregularities from its networks and other sources. We will promptly bring them to the attention of the NEC for solution in order to maintain a proper election process based on legal principles, with the intention of building confidence in the elections among the population.

For further information, please contact:

Dr. Hang Puthea
Executive Director of NICFEC
Tel: (012)-905-656

Q. Constitutional Council Decision Regarding Article 121, October 22, 2001

Unofficial translation by NDI

**Kingdom of Cambodia
Nation, Religion, King**

Constitutional Council

Case

No.: 044/007/2001

Dated 02 October 2001

Decision

No.: 045/007/2001 CC

Dated 22 October 2001

The Constitutional Council

- Having seen the Constitution of Kingdom of Cambodia;
- Having seen Royal Decree no. 0498/06, dated 08 April 1998, promulgated the Law on Organization and --- Functioning of the Constitutional Council;
- Having seen Royal Decree no. 0301/05, dated 19 March 2001, promulgated the Law on Administration of Commune-Sangkat;
- Having seen Royal Decree no. 0301/04, dated 19 March 2001, promulgated the Law on Commune-Sangkat Council Election;
- Having seen the petition of 15 members of the National Assembly requesting for interpretation of Article of the Royal Decree 0301/04, dated 19 March 2001, which promulgated the Law on Commune-Sangka Council Election and was received on 02 October 2001 by the General Secretariat of the CC,

After having listened to the report of the reporting members;

After having debated properly in accordance with the law;

- Understand that the complaint no. 19/01, dated 30 September 2001 of 15 parliamentarians, has clear reasons and in accordance with new Article 136 and new Article 141 of the Constitution and Article 18 of the Royal Decree no. 0498/06, dated 08 April 1998, which promulgated the Law on Organization and Functioning of the Constitutional Council can accept the complaint for debate.
- Understand that the Constitutional Council declared that the Law on Commune-Sangkat Council Election in pursuance with the Constitution based on the Constitutional Council Decision no. 042/004/200 I, dated 07 March 2001.
- Understand that "Preliminary list of candidates", (Article 116 and 117 of the Royal Decree no. 0301/04, dated 19 March 2001, which promulgated the Law on Commune-Sangkat Council Election), has not yet become the "Official List of Candidates", therefore, during this period when it is not yet the "Official List of Candidates", the modification of criteria can be made. In the case of Article 121 of the Royal Decree no. 0301/04, dated 19 March 2001, which promulgated the Law on Commune-Sangkat Council Election, is still under the phase of "Preliminary List of Candidates". Thus, the principle for modifications of criteria or change of candidates shall be implemented under Article 121. On the other hand, under the Law on Commune-Sangkat Council Election, there is no provision which prohibits the modification or change of candidates to whom oppositions were brought against by citizens.

Decide

Article 1: According to the above reasons, in all phases of the "Preliminary List of Candidates", the modification or change of candidates for which oppositions were brought against shall always be made, including the phase of a case which was stated in Article 121 of the Royal Decree no. 0301/04, dated 19 March 2001, which promulgated the Law on Commune-Sangkat Council Election.

Article 2: This decision was made in Phnom Penh, dated 22 October 2001 during the plenary session of the Constitutional Council and is the final decision, which is closed for the appeal and shall have the effect for implementation of all powers as stipulated in the Constitution and shall be published in the Royal Journal.

Made in Phnom Penh. 22 October 2011

Constitutional Council
President
Signed and stamped
Bin Chhin

សំណុំរឿង

លេខ : ០៤៤/០០៧/២០០១

ចុះថ្ងៃទី ០២ ខែ តុលា ឆ្នាំ ២០០១

រចនាសម្ព័ន្ធនៃ

លេខ : ០៤៥/០០៧/២០០១ កបណ.ច

ចុះថ្ងៃទី ២២ ខែ តុលា ឆ្នាំ ២០០១

ក្រុមប្រឹក្សាធម្មនុញ្ញ

- បានឃើញរដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា
- បានឃើញព្រះរាជក្រមលេខ ជស/រកម/០៤៩៨/០៦ ចុះថ្ងៃទី ០៨ ខែ មេសា ឆ្នាំ ១៩៩៨ ប្រកាសឱ្យប្រើច្បាប់ស្តីពីការរៀបចំ និងការប្រព្រឹត្តទៅនៃក្រុមប្រឹក្សាធម្មនុញ្ញ
- បានឃើញព្រះរាជក្រមលេខ នស / រកម / ០៣០១ / ០៥ ចុះថ្ងៃទី ១៩ ខែ មីនា ឆ្នាំ ២០០១ ប្រកាសឱ្យប្រើច្បាប់ស្តីពីការគ្រប់គ្រងរដ្ឋបាលឃុំ សង្កាត់
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០៣០១/០៤ ចុះថ្ងៃទី ១៩ ខែ មីនា ឆ្នាំ ២០០១ ប្រកាសឱ្យប្រើច្បាប់ស្តីពីការបោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាឃុំ សង្កាត់
- បានឃើញបណ្តឹងរបស់អ្នកតំណាងរាស្ត្រ ១៥ រូប ស្នើសុំបកស្រាយមាត្រា ១២១ នៃព្រះរាជក្រមលេខ នស/រកម/០៣០១/០៤ ចុះថ្ងៃទី ១៩ ខែ មីនា ឆ្នាំ ២០០១ ប្រកាសឱ្យប្រើច្បាប់ស្តីពីការបោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាឃុំ សង្កាត់ ហើយដែលអគ្គលេខាធិការដ្ឋានក្រុមប្រឹក្សាធម្មនុញ្ញទទួលបាននៅថ្ងៃទី ០២ ខែ តុលា ឆ្នាំ ២០០១

ក្រោយពីបានស្តាប់របាយការណ៍របស់សហគណៈកម្មាធិការ

ក្រោយពីបានពិភាក្សាត្រឹមត្រូវការច្បាប់ហើយ

- យល់ឃើញថា ពាក្យបណ្តឹងលេខ ១៩/០១ ខសរ ចុះថ្ងៃទី ៣០ ខែ កញ្ញា ឆ្នាំ ២០០១ របស់អ្នកតំណាងរាស្ត្រទាំង ១៥រូប មានមូលហេតុច្បាស់លាស់ និង អនុលោមតាមមាត្រា ១៣៦ ថ្មី មាត្រា ១៤១ ថ្មី នៃរដ្ឋធម្មនុញ្ញ និង មាត្រា ១៨ នៃព្រះរាជក្រមលេខ ជស/រកម/០៤៩៨/០៦ ចុះថ្ងៃទី ០៨ ខែ មេសា ឆ្នាំ ១៩៩៨ ប្រកាសឱ្យប្រើច្បាប់ស្តីពីការរៀបចំនិងការប្រព្រឹត្តទៅនៃក្រុមប្រឹក្សាធម្មនុញ្ញ ក្រុមប្រឹក្សាធម្មនុញ្ញអាចទទួលពាក្យបណ្តឹងនោះមកពិភាក្សាបាន ។

យល់ឃើញថា ក្រុមប្រឹក្សាធម្មនុញ្ញបានប្រកាសថា ការរដ្ឋប្រហារបោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាធម្មនុញ្ញ សង្កាត់នេះ ស្របនឹងរដ្ឋធម្មនុញ្ញរួចហើយ តាមសេចក្តីសម្រេចរបស់ក្រុមប្រឹក្សាធម្មនុញ្ញ លេខ ០៤២/០០៤/២០០១ កបជ.ច ចុះថ្ងៃទី ០៧ ខែ មីនា ឆ្នាំ ២០០១ ។

- យល់ឃើញថា "បក្សៈបក្សៈបក្សៈ" (មាត្រា ១១៦ និង មាត្រា ១១៧ នៃព្រះរាជក្រមលេខ នស/រកម/០៣០១/០៤ ចុះថ្ងៃទី ១៩ ខែ មីនា ឆ្នាំ២០០១ ប្រកាសឱ្យប្រើច្បាប់ស្តីពីការបោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាធម្មនុញ្ញ សង្កាត់) គឺជាបញ្ជីបេក្ខជន ដែលមិនទាន់ទៅជា "បក្សៈបក្សៈបក្សៈ" ដូច្នេះក្នុងរយៈពេលដែលមិនទាន់ទៅជា "បក្សៈបក្សៈបក្សៈ" ការបំពេញ លក្ខខណ្ឌដែលខ្លះខាត ត្រូវតែទាចធ្វើទៅបាន ។ ករណីនៃមាត្រា ១២១ នៃព្រះរាជក្រមលេខ នស/រកម/០៣០១/០៤ ចុះថ្ងៃទី ១៩ ខែ មីនា ឆ្នាំ ២០០១ ប្រកាសឱ្យប្រើច្បាប់ស្តីពីការ បោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាធម្មនុញ្ញ សង្កាត់ គឺស្ថិតនៅក្នុងដំណាក់កាលនៃ "បក្សៈបក្សៈបក្សៈ" នៅឡើយ ។ គោលការណ៍នៃការកែតម្រូវចំណុចខ្លះខាត ឬ ការផ្លាស់ប្តូរបេក្ខជន ត្រូវតែអនុវត្ត បានចំពោះមាត្រា ១២១ ។ ម្យ៉ាងទៀត ក្នុងច្បាប់ស្តីពីការបោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាធម្មនុញ្ញ សង្កាត់នេះ ក៏ពុំមានបទបញ្ញត្តិគ្រប់ដំណាក់កាល ហាមមិនឱ្យធ្វើការបំពេញបន្ថែម ឬ ផ្លាស់ប្តូរបេក្ខជន ដែលត្រូវប្រជាពលរដ្ឋប្តឹងជំទាស់នោះដែរ ។

: យោងតាមបទបញ្ជាខាងលើ ក្នុងគ្រប់ដំណាក់កាលនៃ "បក្សៈបក្សៈបក្សៈ" ការ កែតម្រូវចំណុចខ្លះខាត ឬ ការផ្លាស់ប្តូរបេក្ខជនដែលប្រជាពលរដ្ឋបានប្តឹងជំទាស់ ត្រូវ ធ្វើបានជាធិបតី ត្រូវទាំងដំណាក់កាលនៃករណី ដែលមានចែងក្នុងមាត្រា ១២១ នៃព្រះ- រាជក្រមលេខ នស/រកម/០៣០១/០៤ ចុះថ្ងៃទី ១៩ ខែមីនា ឆ្នាំ២០០១ ដែលប្រកាស ឱ្យប្រើច្បាប់ស្តីពីការបោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាធម្មនុញ្ញ សង្កាត់ ។

: សេចក្តីសម្រេចនេះ ធ្វើនៅរាជធានីភ្នំពេញ ថ្ងៃទី ២២ ខែ តុលា ឆ្នាំ ២០០១ នាសម័យប្រជុំ ពេញរដ្ឋនៃក្រុមប្រឹក្សាធម្មនុញ្ញ និង ជាសេចក្តីសម្រេចស្ថាពរវិទ្យុស្តីវត្ស ហើយមានអាកុ- ភាពអនុវត្តទៅលើអំណាចទាំងអស់ដែលមានចែងនៅក្នុងរដ្ឋធម្មនុញ្ញ និង ត្រូវចុះផ្សាយ ក្នុងរាជកិច្ច ។

R. Joint Statement on the Memorandum of Understanding Relating to the NGO
Coordinating Committee by COMFREL, COFFEL and NICFEC,
February 21, 2001

21 February 2001

COMFREL - COFFEL - NICFEC

Joint Statement on

Memorandum of Understanding Relating to NGO Coordinating Committee

We, COMFREL, COFFEL, and NICFEC, view the Commune Election Law as having been written in a way calculated to undermine the independence of the election monitoring groups. The law suffers from the incurable defect of charging one body, the National Election Commission, with the inherently incompatible roles of both organizing and monitoring an election. A final decision has not yet been reached concerning our participation in the law's NGO Coordinating Committee. One possible course of action that has been suggested is to obtain a memorandum of understanding from a reformed National Election Committee. This memorandum of understanding will candidly address our concerns and indicate the government's good faith intentions to work with the existing election monitoring groups to ensure free, fair, and transparent commune elections in Cambodia. Were we to cooperate with the law's NGO Coordinating Committee in the absence of such a clarifying agreement, our role as independent monitors of the election process will be a sham. At a minimum, such a memorandum of understanding must include the following provisions:

1. Individual members of the NGO Coordinating Committee will obtain and control their own funding.
2. Each member of the NGO Coordinating Committee will be permitted access to 100% of the communes throughout all stages of the election process, including but not limited to registration, voting, and vote-counting. Without such 100% access, there can be no independent monitoring of an election.
3. Individual parallel counting of votes will be used in all communes. Individual members of the NGO Coordinating Committee will be empowered to conduct these independent parallel vote counts.
4. Individual members of the NGO Coordinating Committee will monitor the National Election Committee's conduct of the election.
5. Each member of the NGO Coordinating Committee will be permitted to make their own independent public statements on any questionable aspects of the election process.

The following are illustrative examples of problems with the Commune Election Law:

[] Article (153) essentially grants the NEC the right to remove anyone from the law's NGO Coordinating Committee for any reason, legitimate or not. There is no review of the NEC's exercise of this power.

[] Given the existence of at least three election monitoring groups that have been active for several years (Comfel, Coffel and Nicfec), the provision of article (150) requiring that all association that wish to be

members of the law' s NGO Coordinating Committee be established and recognized nine months prior to the Commune Elections can only be intended to bar the already existing groups from participating in a truly independent manner. There will be newly established organizations waiting to take the place of any troublesomely independent members of the NGO Coordinating Committee.

[] Pursuant to Article (149), the law's NGO Coordinating Committee" shall be organized by an election under procedures determined by the NEC". There is no indication as to who will do the electing of members the NGO Coordinating Committee.

For more information, please contact:

Thun Saray

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President, Coffel
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S. NGOCC Instructions Regarding Guidelines for National Observers,
October 12, 2001

KINGDOM OF CAMBODIA
Nation, Religion, King

Coordination Committee for Association-
NGO Electoral Observation
No 01/SN/KS 01

Instructions Regarding Guidelines for National Observers

Through experiences gained during the voter registration, the Coordination Committee for Association-NGO Electoral Observation sees that the observation process of a number of associations and NGOs are in a deficiency in the observation process itself as well as in the cooperation among the national observers, including compliance with the electoral laws, regulations and the rules & procedure.

Regarding the deficiency mentioned above, the Coordination Committee for Association-NGO Electoral Observation is strongly concerned with the Cooperation in organizing observers in the election process as well as with voter education that such deficiency might affect a free and fair election and a transparency in the election process which needs to be secured by observers in our civil society.

In order to secure an effective observation process in the future commune election under the electoral laws, regulations and the rules of procedure in effect, and in order to secure a free and fair election and a transparency in the election process, the Coordination Committee for Association-NGO Electoral Observation makes the following suggestions to any associations and non-governmental organizations that have applied for registration for observation With the Committee:

1/All observers are suggested to undertake training in electoral laws, regulations and the rules of procedure from the Coordination Committee for Association-NGO Electoral Observation as a Core Trainer and provide clear evidence as regards to further training provided by a Core Trainer to his or her observers in accordance with the provisions outlined in Article 152 of the Law on Election to the Commune Council that the Coordination Committee for Association-NGO Electoral Observation shall have a duty to train association and NGO electoral observers toe laws, regulations and the rules of procedure relating to the election; and in accordance with the regulations and the rules of procedure specified in Chapter 9/9.2.9.5 saying that the Coordination Committee for Association-NGO Electoral Observation shall secure that all association and NGO electoral observers have been trained in laws, regulations and the rules of procedure relating to the election.

2/All associations and non-governmental organizations are suggested to cooperate with the Coordination Committee for Association-NGO Electoral Observation in deploying observers at every place in accordance with the provisions outlined in Article 152 of the Law on Election to the Commune Council that the Coordination Committee for Association and NGO Electoral Observation shall have a duty cooperate with other associations-NGOs in organizing association and NGO Electoral Observers in order to participate in observing the process of updating the list of electors, voter registration, casting ballots and vote-counting.

3/While applying for registration for observation with the Coordination Committee for Association-NGO Electoral Observation, all associations and non-governmental organizations are requested to provide clear locations of the places they will undertake observation and shall show what they are unable to achieve in order to avoid deploying many observers at some places and none at others.

4/All associations and non-governmental organizations are requested to properly deploy their observers at designated places in accordance with the accreditation cards provided by the Coordination Committee for Association-NGO Electoral Observation.

5/ The Coordination Committee for Association-NGO Electoral Observation may not provide accreditation for observation to any association and non-governmental organization that failed to train properly their electoral observers in accordance with the provisions outlined in the laws.

The Coordination Committee for Association-NGO Electoral Observation expresses its hope that all associations and non-governmental organizations will closely cooperate with the Committee for the benefit of a free and fair election and the transparency in the Election of the Commune Council.

Phnom Penh, October 12, 2001
Coordination Committee for Association-NGO
Electoral Observation
Chairman
(Signed and stamped)
Pok Nanda



សេចក្តីណែនាំ

ស្តីពី

គោលការណ៍ប្រតិបត្តិសំរាប់អ្នកសង្កេតការណ៍ជាតិ

ឆ្លងតាមរយៈបទពិសោធន៍ដែលគណៈកម្មាធិការសំរាប់រូលនៃសមាគម និងអង្គការមិនមែនរដ្ឋាភិបាល សំរាប់សង្កេតការណ៍បោះឆ្នោត “គស” ទទួលបានក្នុងអំឡុងពេលនៃដំណាក់កាលចុះឈ្មោះអ្នកបោះឆ្នោត “គស” ពិនិត្យឃើញថា ដំណើរការប្រព្រឹត្តទៅនៃការសង្កេតការណ៍របស់សមាគម និងអង្គការមិនមែនរដ្ឋាភិបាលមួយចំនួន មានលក្ខណៈខ្វះខាតទាំងដំណើរការសង្កេតការណ៍ ទាំងកិច្ចសហប្រតិបត្តិការក្នុងចំណោមអ្នកសង្កេតការណ៍ជាតិ រួមទាំងការអនុវត្តច្បាប់ បទបញ្ជា និងនីតិវិធី ស្តីពីការបោះឆ្នោតផងដែរ ។

យោងទៅតាមការខ្វះខាតខាងលើនេះ គណៈកម្មាធិការ “គស” មានសេចក្តីព្រួយបារម្ភជាខ្លាំង លើកិច្ចការសហការរៀបចំអ្នកសង្កេតការណ៍ក្នុងដំណើរការបោះឆ្នោត ក៏ដូចជាការអប់រំប្រជាពលរដ្ឋស្តីពីការបោះឆ្នោត ដែលការខ្វះខាតទាំងនេះអាចធ្វើអោយប៉ះពាល់ដល់ភាពសេរី ត្រឹមត្រូវ យុត្តិធម៌ និងតម្លាភាពនៅក្នុងការបោះឆ្នោត ដែលត្រូវចូលរួមធានាពីសំណាក់អ្នកសង្កេតការណ៍សង្គមស៊ីវិលយើង ។

ក្នុងគោលបំណង ធានាអោយបាននូវដំណើរការប្រព្រឹត្តទៅរបស់អ្នកសង្កេតការណ៍ជាតិ ក្នុងដំណើរការបោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាឃុំ-សង្កាត់នាពេលខាងមុខនេះ ប្រព្រឹត្តទៅប្រកបដោយគុណភាព ប្រសិទ្ធភាព និងអនុវត្តបានត្រឹមត្រូវតាមច្បាប់ បទបញ្ជា និងនីតិវិធីស្តីពីការបោះឆ្នោត និងដើម្បីចូលរួមធានាដល់ភាពសេរី ត្រឹមត្រូវ យុត្តិធម៌ និងតម្លាភាពនៅក្នុងការបោះឆ្នោត គណៈកម្មាធិការ “គស” សូមធ្វើសំណូមពរដល់សមាគម និងអង្គការមិនមែនរដ្ឋាភិបាលដែលបានដាក់ពាក្យសុំចុះឈ្មោះសង្កេតការណ៍ តាមរយៈគណៈកម្មាធិការ “គស” ដូចខាងក្រោម ៖

១-ស្នើសុំដល់អ្នកសង្កេតការណ៍ទាំងអស់ទទួលយក “ការហ្វឹកហ្វឺនអំពីច្បាប់ បទបញ្ជា និងនីតិវិធីស្តីពីការបោះឆ្នោត” ពីគណៈកម្មាធិការ “គស” សំរាប់គ្រូបង្គោល, និងស្នើសុំអោយមានភស្តុតាងជាក់លាក់សំរាប់ការអប់រំបន្តដែលគ្រូបង្គោលបានធ្វើដល់អ្នកសង្កេតការណ៍របស់ខ្លួន ស្របតាមមាត្រា ១៥២ នៃច្បាប់ស្តីពីការបោះឆ្នោតជ្រើសរើសក្រុមប្រឹក្សាឃុំ-សង្កាត់ដែលចែងថា “ គសមានភារកិច្ចហ្វឹកហ្វឺនដល់អ្នកសង្កេតការណ៍ នៃសមាគម និងអង្គការក្រៅរដ្ឋាភិបាលអំពីច្បាប់ បទបញ្ជា និងនីតិវិធីទាក់ទងដល់ការបោះឆ្នោត...” និងស្របតាមបទបញ្ជា និងនីតិវិធីជំពូក ៩ ត្រង់ចំនុច ៩.២.៩.៥ ចែងថា “គសត្រូវធានាថា អ្នកសង្កេតការណ៍នៃសមាគម រឺអង្គការក្រៅរដ្ឋាភិបាលដែលបានដាក់ពាក្យ សុំចុះឈ្មោះសង្កេតការណ៍បោះឆ្នោតសុទ្ធតែត្រូវបានទទួលការហ្វឹកហ្វឺនអំពីច្បាប់ បទបញ្ជា និងនីតិវិធីទាក់ទងដល់ការបោះឆ្នោត ។”

២-ស្នើសុំសមាគម និងអង្គការក្រៅរដ្ឋាភិបាលទាំងអស់ត្រូវសហការគ្នាជាមួយគណៈកម្មាធិការ“គស” សំដៅរៀបចំ អ្នកសង្កេតការណ៍ អោយបានគ្រប់ទីកន្លែង ស្របតាមមាត្រា ១៥២ ចំនុចទី១ ចែងថា គណៈកម្មាធិការ“គស”មានភារកិច្ច “សហការជាមួយសមាគម និងអង្គការក្រៅរដ្ឋាភិបាលនានា ក្នុងការរៀបចំអ្នកសង្កេតការណ៍នៃសមាគម និងអង្គការ ក្រៅរដ្ឋាភិបាល ដើម្បីចូលរួម សង្កេតការណ៍ធ្វើបច្ចុប្បន្នភាពបញ្ជីឈ្មោះអ្នកបោះឆ្នោត ចុះឈ្មោះអ្នកបោះឆ្នោត ដំណើរការ បោះឆ្នោត និងដំណើរការរាប់សន្លឹកឆ្នោត...។”

៣-ស្នើសុំសមាគម និងអង្គការមិនមែនរដ្ឋាភិបាលទាំងអស់ ពេលដាក់ពាក្យសុំសង្កេតការណ៍តាមរយៈគណៈកម្មាធិ ការ “គស”ត្រូវញែកអោយបានច្បាស់លាស់ពីទីតាំងសង្កេតការណ៍របស់ខ្លួន និងត្រូវបង្ហាញពីលទ្ធភាពដែលខ្លួនមិនអាចធ្វើការ សង្កេតការណ៍បាន ចៀសវាងនូវបញ្ហា មានអ្នកសង្កេតការណ៍ច្រើននៅការិយាល័យខ្លះ ហើយការិយាល័យខ្លះទៀតគ្មានអ្នក សង្កេតការណ៍ ។

៤- ស្នើសុំសមាគម និងអង្គការមិនមែនរដ្ឋាភិបាលទាំងអស់ ដាក់ព្រមអ្នកសង្កេតការណ៍អោយបានត្រឹមត្រូវ ទៅតាមទីកន្លែង និងតាមចំនួនប័ណ្ណដែលបានសុំឆ្លងតាមរយៈគណៈកម្មាធិការ“គស” ។

៥- “គស” ពុំអាចធ្វើការបញ្ជាក់អោយសមាគម និងអង្គការមិនមែនរដ្ឋាភិបាល សំរាប់សុំចុះឈ្មោះសង្កេតការណ៍ បោះឆ្នោតបានទេ ប្រសិនបើសមាគម និងអង្គការទាំងអស់ពុំបានធ្វើការហ្វឹកហ្វឺនដល់អ្នកសង្កេតការណ៍របស់ខ្លួនបានត្រឹមត្រូវ តាមច្បាប់ ។

គណៈកម្មាធិការ “គស” សង្ឃឹមថា សមាគម និងអង្គការមិនមែនរដ្ឋាភិបាលទាំងអស់ នឹងសហការយ៉ាងជិតស្និទ្ធ ជាមួយគណៈកម្មាធិការ “គស” ដើម្បីជាប្រយោជន៍ដល់ភាពសេរី ត្រឹមត្រូវ យុត្តិធម៌ និងតម្លាភាព នៅក្នុងការបោះឆ្នោត ជ្រើសរើសក្រុមប្រឹក្សាឃុំ-សង្កាត់នាពេលខាងមុខនេះ ។

ធ្វើនៅភ្នំពេញ, ថ្ងៃទី ១២ ខែ តុលា ឆ្នាំ ២០០១

គណៈកម្មាធិការ “គស”



Handwritten signature of the official.

ប៊ុន ណាណូរ

T. NGOCC Letter to COMFREL Regarding Training of Observers,
October 15, 2001

Unofficial Asia Foundation Translation

KINGDOM OF CAMBODIA
Nation Religion King

Coordination Committee for Association-
NGO Electoral Observation
No 63/01/KS 01

Mr Koul Panh Nha
Executive Director
COMFREL

Subject: Response to your application for registration for electoral observation

Reference:

- Pursuant to the electoral laws, regulations and the rules of procedure
- Instructions No 01/SN/KS 01 of the Coordination Committee for Association-NGO Electoral Observation, dated October 12, 2001, regarding guidelines for national observers,
- COMFREL Letter No. 403/01 dated October 12, 2001.

Further to the above subject and reference, the Coordination Committee for Association-NGO Electoral Observation is pleased to inform you that your organization has not yet fulfilled the requirement regarding the *training of observers* outlined in the electoral laws, regulations and the rules of procedure.

For this reason, the Coordination Committee for Association-NGO Electoral Observation may not accept your application for registration for observation until COMFREL has substantially fulfilled the required conditions as outlined in outlined in the electoral laws, regulations and the rules & procedure.

The Coordination Committee for Association-NGO Electoral Observation is pleased to cooperate with your organization as well as with other associations and nongovernmental organizations that are willing to participate in observing the future commune election in terms of issuing accreditation for your organization.

Please accept my sincere consideration

Phnom Penh, October 15, 2001
Coordination Committee for
NGO Electoral Observation
Chairman
(Signed and stamped)
Pok Nanda

U. Cambodia Office of the United Nations High Commissioner for Human Rights
Pre-Campaign Statement, January 11, 2002



UNITED NATIONS/ NATIONS UNIES/អង្គការសហប្រជាជាតិ
 SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL
 FOR HUMAN RIGHTS IN CAMBODIA/
 REPRESENTANT SPECIAL DU SECRETAIRE GENERAL
 POUR LES DROITS DE L'HOMME AU CAMBODGE
 គឺជាភារកិរសមរមន៍រវាងអង្គការសហប្រជាជាតិក្នុងការពិនិត្យស្ថានភាពសិទ្ធិមនុស្សនៅកម្ពុជា



COMMUNE COUNCIL ELECTIONS, 2002

1 January 2001 – 11 January 2002
 The pre-campaign period

This report has been compiled by the Special Representative of the Secretary-General of the United Nations for Human Rights in Cambodia on the basis of information that has reached the Cambodia Office of the High Commissioner for Human Rights. It examines election-related crimes and intimidation in breach of national laws and international human rights standards that have come to the attention of the COHCHR since January 1, 2001. Its primary purpose is to provide the Royal Government of Cambodia with information on such cases and recommend ways to address these.

The Special Representative welcomes the commitment the Prime Minister made in his December 10th speech marking International Human Rights Day to prevent all forms of violence and intimidation before, after and during the elections. However, the recent increase in election-related deaths, and the emergence of clear patterns of intimidation and harassment in large areas of the country are of growing concern. During his visit to Cambodia in November and in his forthcoming report to the United Nations Commission on Human Rights the Special Representative noted that in general he had a positive impression of preparations for the commune elections. This impression is now in danger of being seriously tarnished.

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I. SUMMARY

Acts of violence and intimidation connected with Cambodia's 2002 commune polls are affecting many areas of the country. Since January 2001, fifteen political activists have been murdered or have died in circumstances that are suspect. Nine of these deaths have occurred since the start of November, and three of these in the first week of 2002. Serious violence appears therefore to be accelerating ahead of the formal start of campaigning.

No less troubling is widespread intimidation, especially in districts along the country's western border, as well as in some areas of central and southeast Cambodia. This report points to specific areas where problems are occurring and where immediate action is needed. Particular attention is drawn to two provinces, **Kampong Cham** and **Kampot**, and to two districts in these provinces, **Tbong Khmum** and **Chhouk**. It is the view of the Special Representative of the Secretary General for Human Rights in Cambodia that immediate steps should be taken in these locales and in surrounding areas to address practices that clearly contravene Cambodia's electoral and criminal laws, and to tackle longstanding problems arising from impunity.

The primary aim of this report is to highlight problems that have come to the attention of the Cambodia Office of the United Nations High Commissioner for Human Rights and provide the Royal Government of Cambodia with recommendations to tackle intimidation so that an election can be held in a free and fair manner and in accordance with national and international laws. The Government needs to effectively demonstrate to the electorate that individuals responsible for violence and intimidation are dealt with effectively and according to law. Thus far the COHCHR is aware of only one case related to the election, in 2001, in which individuals have been brought to justice and sentenced. Neither the provisions of criminal law nor the provisions of the Law on Commune Council Elections are being sufficiently enforced. The power to investigate and impose sanctions for violations of the election law lies with the National Election Committee. Although numerous cases have been brought to the attention of the NEC, it has yet to make a serious attempt to enforce the relevant provisions of the law.

Problems with the illegal collection of voter-registration cards by commune and village authorities have been reported in many parts of the country. What is important to note here is that seemingly minor offences, that also include such practices as the destruction of political party signboards, exert a powerful intimidatory effect in Cambodia's fragile political environment, and in light of its past experience. This is especially true in places where the electorate has been exposed to violence during the current pre-election period and during the general elections in 1993 and 1998. It is essential that those responsible are held accountable and that special voter-education efforts are undertaken in affected areas to reassure and inform the electorate.

In a majority of cases of intimidation local authority officials at the commune and village levels and commune police have been responsible. The victims in some two-thirds of all cases are candidates and activists of the Sam Rainsy Party. In most remaining cases, candidates and activists representing Funcinpec have been the targets.

The Special Representative calls on the Government and the NEC to immediately act on the recommendations contained in this report. The Commune Council Elections are an important further step to consolidating a democratic multi-party system that is accountable to the wishes of the people of Cambodia. They follow elections in 1993 and 1998 that were marred by murders, violence and intimidation. Such acts must not be allowed to become entrenched as an election norm.

II. PROBLEM DISTRICTS

The geographic spread of incidents related to the election shows two distinct areas where serious problems are occurring. One encompasses the central and southeastern provinces of Kampong Cham, Prey Veng, Kandal, and Kampot. The other area comprises the western border provinces of Battambang, Banteay Meanchey and Pailin municipality. In two thirds of all incidents that have come to the attention of the COHCHR the victims have been candidates or activists with the Sam Rainsy Party. Almost all of the remaining cases involve individuals connected to Funcinpec.

Western Cambodia

The provinces of Battambang and Banteay Meanchey along with Pailin municipality have recorded a higher number of problems related to the elections, since May 31, 2001, than any other part of Cambodia. COHCHR investigations have determined that responsibility for a considerable number of violations of the law in these areas lies with members of the Royal Cambodian Armed Forces. Of particular concern is the behaviour of the military in the districts of **Sampov Loun, Phnom Preuk, Komrieng, Koas Krolor and Samlot.**

Cases reported to the COHCHR include a murder and an attempted murder, repeated incidents of arbitrary detention, and numerous and serious acts of intimidation. Among these is an incident in **Komrieng** district of Battambang province on September 15 where two soldiers were detained and accused of involvement with the Cambodian Freedom Fighters after requesting leave to stand as Sam Rainsy Party candidates. In **Samlot** district of Battambang province on October 8 four Sam Rainsy Party candidates were called to a local Cambodian People's Party office where they were threatened. On October 2, in **O Chrouv** district of Banteay Meanchey, armed men surrounded the home of a Funcinpec member, led him away at gunpoint and held him for several hours. He was told that unless he joined the CPP he would be considered a Cambodian Freedom Fighters member.

A common factor among trouble-afflicted districts in Banteay Meanchey and Pailin is high voter-support for the Sam Rainsy Party during the 1998 election. Here, the districts where most problems have been reported are **Malai** in Banteay Meanchey province, and **Pailin** and **Sala Krao** in Pailin municipality. In each of these the Sam Rainsy Party share of the vote in 1998 exceeded 40 percent¹.

In Battambang province, apparent correlation between the 1998 general election vote and intimidation and violence in the 2001 pre-commune election period shows a complete absence of reported problems in the two districts where the CPP vote exceeded 40 percent (Bovel and Banan)². Where the CPP vote share was below this level the opposite is true. More problems have been reported in the districts of Samlot, Phnom Preuk, Sampov Loun, Komrieng, Koas Krolor, Battambang, Ratanak Mondul and Ek Phnom than in any other region of Cambodia.

A further and potentially important factor behind these events may be the abundance of natural resources in this region coupled with lucrative possibilities for those in power to control or otherwise benefit from cross-border trade. It is noteworthy that incidents have been recorded in every district adjacent to the border, from O Chreuv in the north to Samlot in the south.

Until 1996 many areas near the border were under the control of the Khmer Rouge, and the armed forces in these areas are mainly made up of former Khmer Rouge soldiers. Nonetheless, and despite a more stable political situation since then, there appears to have been a significant worsening over 1998 of the pre-election environment in this region. Steps to protect candidates in these areas from further intimidation are required, while immediate measures should be instituted to reassure the electorate. There is also a pressing need for measures to tackle impunity, including through reining in members of the armed forces involved, and ensuring that those responsible are dealt with according to law.

Central and Southeastern Provinces

The provinces of Kampong Cham, Kampot, Kandal, and Prey Veng have recorded some of the most serious offences related to the election. Though fewer incidents have been reported than in western Cambodia, they have tended to be much more severe. It is the view of the Special Representative that the districts of **Tbong Khmum** in Kampong Cham and **Chhouk** in Kampot deserve special attention.

Tbong Khmum and its neighbouring districts on both sides of the Mekong recorded significant problems during the 1998 pre-election period, and that pattern persists. Three of the election-related deaths in Cambodia since the start of 2001 have been in Tbong Khmum. Explicit threats and death threats have been made against election candidates, while in neighbouring **Ponhea Krek** farmers with links to the Sam Rainsy Party had their property targeted in a chain arson attack in late December 2001. Victims and witnesses in this region are often nervous about talking. It is also apparent that members of the armed forces involved are protected by their superiors.

Chhouk district in Kampot has similarly recorded numerous cases. Two murders in nearby Chumkiri district during the first week of 2002, involved a Chhouk district election candidate and her husband. Violence and intimidation appears to be particularly serious in the communes of **Taken** and **Tropaing Plaing**. It is important to note that here, as elsewhere, the impact of violence and intimidation on individual communities is frequently exported to others via the contagion effects of fear.

² Generally, areas of Cambodia where there was strong voter support in 1998 for the CPP have recorded few incidents

The murders that have taken place of political activists are detailed elsewhere in this report. Intimidation and other forms of cheating in these provinces are widespread and serious. On July 10, in Dambe district of Kampong Cham, a military commander and the village authorities told a Sam Rainsy Party activist that unless he removed a party signboard, his home would be burned down. On October 1 villagers in Koh Thom district of Kandal were organised into groups to ensure that each member voted for the CPP. In Chhouk district of Kampong Speu in August local authorities refused to recognise the residency of three prospective Funcinpec candidates, despite their having lived there for four years. They were thus denied the right to stand for election or to register as voters. In Memuth district of Kampong Cham, on August 23, a Sam Rainsy Party member was questioned about his voting intentions and then told that a bullet would go through his forehead unless he "behaved".

As in most other parts of the country it is apparent that local authority officials, mainly at village and commune levels, and commune police have been responsible for much of the violence and intimidation. However, in these provinces of central and southeastern Cambodia correlations between problems and the balance of power from the 1998 election are less clear than in the western border region. Generally, there has been an equal measure of incidents in both CPP and Funcinpec districts.

III. KILLINGS AND UNRESOLVED DEATHS

Since January 1, 2001, fifteen³ party activists, prospective election candidates, actual candidates and other politically active individuals have either been murdered or have died in suspect circumstances. Nine of these deaths have occurred since the start of November, three within the first week of 2002. It appears therefore that the frequency is increasing ahead of the election campaign period.

Of particular concern is that a third of these deaths have been in a single province, Kampong Cham. These murders occurred in areas where problems of impunity were also recorded during the 1998 election⁴. Three of the Kampong Cham murders were in Tbong Khmum district (see section on problem districts), and two of these may be linked⁵.

Whereas most cases of intimidation involve Sam Rainsy Party activists, deaths have been more or less evenly spread between Funcinpec and the Sam Rainsy Party. Five of the seven Funcinpec deaths have occurred since the start of November. Four

³ The figure of 15 excludes two Funcinpec activists killed on January 5, 2002 in Kampong Cham, apparently in a traffic accident. A COHCHR investigation in this case is still ongoing. OTHER DEATHS: Jan. 7, 2002, a Funcinpec activist died in a traffic accident in Kampong Cham's Kampong Seim district – this appears wholly accidental; Dec. 29, 2001, a CPP village chief and a friend were murdered in Ponhea Krek district of Kampong Cham – the individuals were not active in the elections process; Jan. 2, 2002, the wife of a prospective Funcinpec village chief was shot dead in Kampong Speu province – she was also not active in the elections process.

⁴ Kampong Cham province saw some of the worst crimes of the 1998 pre-election period. These included the murder of a Sam Rainsy Party member, Em Iem, who was arrested by officials in Tbong Khmum district and then executed. Two individuals, one in Tbong Khmum, the other in O Raing Ov district, were illegally imprisoned.

There were two death threats and numerous intimidation cases.

⁵ November 14, 2001, Toun Phally and Phoung Sophath, activists respectively for Funcinpec and the Sam Rainsy Party were shot dead in Srolog commune, Tbong Khmum. The murders took place less than two hours apart. The number of people involved in each event was about the same. The same kind of gun seems to have been used for the two killings. Since these murders there has been further serious intimidation of Funcinpec activists in this commune.

of the eight Sam Rainsy Party deaths also occurred during the last weeks of 2001. There have been no election-related killings of activists from other political parties.

Twelve of the murders were from shootings. Of the remaining cases at least two involved victims being beaten to death. In only one case is there uncertainty about the cause: The body of Funcinpec candidate Ros Don was found on February 14 in a ditch by the side of a road in Pouk district of Siem Reap province. Police say a traffic mishap was to blame, but further investigation should be undertaken to eliminate other possibilities.

The police investigations of such incidents and subsequent judicial processes show serious shortcomings. Investigating authorities remain reluctant to probe political motives, exacerbating the risk of premature conclusions being drawn. One example concerns the death of Touch Voeun, who had been a prospective Sam Rainsy Party candidate in Siem Reap province: Voeun was shot dead while asleep at home on August 23, 2001. At the very outset of the investigation police stated publicly that the case was non-political. They erroneously arrested a relative of the victim, then kept him in custody for two months. Later suspects were detained beyond the 48 hours permitted by law. During a COHCHR interview on November 20 two of these had marks on their bodies, apparently from torture.

In other killings, summonses and search warrants have been issued but not executed, apparently because suspects are protected from arrest by the military. In one example, the Kampong Cham provincial court issued a summons and search warrant on March 3, 2001, for Tang Lay, a suspect in the January 3, 2001 killing of Sam Rainsy Party activist Phuong Phann. Tang Lay's home is close to the E-43 military base in Dambe district of Kampong Cham. As of December these court orders had still not been carried out. In some other cases suspects have been arrested without warrants.

The Special Representative urges the relevant authorities to conduct thorough and impartial investigations into the deaths of the individuals listed below. The COHCHR is willing to provide further information on these cases. It is important that those responsible are correctly identified and brought to justice without delay and in accordance with criminal law and procedure.

IV. POLITICAL ACTIVISTS KILLED, SINCE JANUARY 2001

BATTAMBANG PROVINCE

- Sam Sophear, Sam Rainsy Party, November 5, 2001
Battambang district, Prek Preah Sdach commune, O' Kchany village

KAMPONG CHAM PROVINCE

- Phuong Phann, Sam Rainsy Party, January 3, 2001
Dambe district, Teuk Chrov commune, Mesor village
- Chhay Than, Funcinpec, January 14, 2001
Tbong Khmum district, Chiro II commune, Toul Vihear village
- Chhim Leang Sri, Sam Rainsy Party, September 21, 2001
Chamkar Leu district, Chey-yo commune, O Pech village
- Phuong Sophath, Sam Rainsy Party, November 14, 2001

COMMUNE COUNCIL ELECTIONS, 2002: The pre-campaign period.

- Tbong Khmum district, Srolop commune, Veal Knach village
- Toun Phally, Funcinpec, November 14, 2001
- Tbong Khmum district, Srolop commune, Tropaing Dom village

KAMPONG CHHNANG PROVINCE

- Meas Soy, Funcinpec, July 17, 2001
- Samaki Meanchey district, Svay Chek commune, Tropaing Mtes village

KAMPONG SPEU PROVINCE

- Uch Horn, Sam Rainsy Party, June 30, 2001
- Baseth district and commune, Sre Traok village

KAMPONG THOM PROVINCE

- Ouk Sao, Sam Rainsy Party, December 8, 2001
- Stung Sen district, Tbong Kropeu commune, Kal Mek village

KAMPOT PROVINCE

- Long Kim Thon, Funcinpec, January 4, 2002
- Chumkiri district, Chumpoyan commune, Khley village
- Soun Kroeun, Funcinpec, January 4, 2002
- Chumkiri district, Chumpoyan commune, Khley village

SIEM REAP PROVINCE

- Touch Voeun, Sam Rainsy Party, August 23, 2001
- Chikreng district, Kampong Kdei commune, Ta Peam village
- Ros Don, Funcinpec, December 14, 2001
- Pouk district, Teuk Vil commune, Sandan village

SVAY RIENG PROVINCE

- Touch Sean, Sam Rainsy Party, January 5, 2002
- Svay Chrum district, Kork Pring commune, Don Leap village

TAKEO PROVINCE

- Om Chiekleng, Funcinpec, December 12, 2001
- Prey Kabas district, Kampeng commune, Kampeng Kandal village

V. COLLECTION OF VOTER-REGISTRATION CARDS

Since voter registration ended in August 2001, local authorities in several provinces have collected voter-registration cards from voters. In most cases investigated by the COHCHR registration cards have been removed from a large segment of the population on instruction from the commune or village chief. Lists have then been prepared that include the name of each registration-card holder and the number of each person's card. Generally, the voter-registration cards are returned after a few days. However, in **Cheuteal**, **Prek Thmei** and **Samrong Thom** communes of Kien Svay district in Kandal province, villagers reported that registration cards collected shortly after the August registration period ended had still not been returned as of late December.

COMMUNE COUNCIL ELECTIONS, 2002: The pre-campaign period.

In most cases, the authorities have not explained why they collect the voter-registration cards. In other cases, people have been informed that the collection of their registration cards is necessary to prevent election fraud.

The Law on Commune Council Elections prohibits the removal of voter-registration cards. Article 231 of the law stipulates that any person who removes a voter-registration card or a substitute certificate from another person should have his/her voter-registration card revoked by the NEC and pay a fine of five million to 25 million Riel. If the person who removes the card is an election candidate, the NEC shall delete his/her name from the candidate list and the candidate will thereby be prohibited from running in the election. The local official responsible for the collection of voter-registration cards is often a CPP election candidate.

Collection of voter cards (as with other forms of low-level intimidation) can exert a powerful intimidatory effect in Cambodia's fragile election environment. This is especially true in districts and areas where communities have already been subjected to violence and threats. Special voter-education efforts should be targeted at affected areas to ensure that these illegal acts are not allowed to affect the election outcome.

On November 2, 2001, the Co-Ministers of Interior issued a request to the Provincial Governors of Battambang, Pursat, Siem Reap, Kampot, Takeo, Kampong Speu and Svay Rieng to investigate reports of voter cards being taken from voters. While the Ministry of Interior has requested these investigations, the NEC has taken no concrete steps to ensure the enforcement of Article 231 of the law.

VI. LAW ENFORCEMENT

On 12 October 2001, the Kampong Speu provincial court convicted two men for the murder and complicity in murder of a prospective Sam Rainsy Party commune election candidate, Uch Horn (*see section on killings*). They were sentenced to 15 and 14 years imprisonment respectively. This was an encouraging step. However, the Special Representative is aware of no other conviction during 2001 for any election-related crime, although arrests have been made in a few cases.

In addition to provisions relating to violent acts, the criminal law in force provides for up to three years imprisonment for anyone who interferes with the free exercise of electoral rights of a voter or candidate or with the proper functioning of the electoral process⁶.

The Law on Commune Council Elections also includes a comprehensive penalty section. Chapter 16 of the law contains provisions dealing with acts carried out by election officials as well as by ordinary citizens. Among the acts prohibited are removal from a person of voter-registration cards, unauthorized entry into a registration or polling station, use of force or intimidation to create loss of confidence in the secrecy of the vote, vote-buying, forcing people to swear their support for a political party, threats and intimidation to prevent a person from standing as a

⁶ Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period, Article 64.

candidate, and hindering political parties and their members from conducting electoral campaign activities.

These provisions provide for the imposition of fines, revocation of voter-registration cards, seizure of hazardous objects and substances and—if the person responsible for the act is a commune council candidate—prohibition from running for the election. Staff of the electoral administration can, in addition to these sanctions, be subject to reprimands and dismissals.

In late November 2001, the NEC adopted an instruction on hearings procedures for Commune Council Election Law violations. This instruction, as well as previously adopted NEC regulations, clarifies that *the electoral administration has the power to conduct hearings and impose penalties on those who have acted in violation of the Law on Commune Council Elections*. Despite the fact that numerous violations of the Law on Commune Council Elections have been brought to the attention of the NEC, no sanctions have yet been imposed.

It is recommended that law enforcement agencies and the NEC give highest possible priority to the investigation of suspected criminal acts and acts that might be regarded as illegal under the Law on Commune Council Elections. It is essential that those responsible for criminal acts are brought to justice and that sanctions are imposed in all cases where it is found that illegal acts have been committed.

VII. CONCLUSION AND RECOMMENDATIONS

Many of the same kinds of crimes and unlawful practices seen during the general election in 1998 are being repeated in the run up to February's commune elections. These include murders, death threats, arbitrary arrest, physical abuse, ceremonies at which people are being asked to swear oaths of allegiance to the ruling party, confiscation of voter cards, and destruction of party property. These problems vary in severity from area to area, but generally appear to be at a similar level as in 1998. There is therefore concern that such problems are becoming entrenched as a normal part of the election process in Cambodia. In light of this the Special Representative recommends:

- Immediate measures to ensure party activists and their families are adequately protected from harm or interference.
- Urgent and thorough investigation into allegations of violence and intimidation against members of political parties.
- Swift and effective steps to tackle impunity and violations of law in Kampong Cham and Kampot provinces, with particular regard to the problems identified in Tbong Khmum and Chhouk districts as well as in surrounding areas.
- Immediate steps to enforce provisions in the criminal and election laws.
- Increased voter education, especially in trouble-afflicted districts.

COMMUNE COUNCIL ELECTIONS, 2002: The pre-campaign period.

- A clear instruction to the Royal Cambodian Armed Forces that suspects in cases involving violations of criminal and commune election laws will not be protected from arrest or judicial processes.
- Further clear reminders to relevant authorities and the public that violence and intimidation against members of political parties will not be tolerated before, during or after the commune council election period, and leading up to the National Assembly elections in 2003.
- Immediate action by the NEC to ensure that its investigations unit is effectively and comprehensively examining and investigating complaints that have been brought to its attention.

COHCHR, 11 January 2001

V. Cambodia Office of the United Nations High Commissioner for Human Rights
Statement on Campaign Period and Post-Election Risks,
February 1, 2002

COMMUNE COUNCIL ELECTIONS, 2002

18 January- 1 February 2002 The Campaign Period and Post-Election Risks

In his report on the commune elections, dated 11 January 2002, The Special Representative of the Secretary General for Human Rights in Cambodia examined problems that had occurred during the pre-campaign period. Lessons from the campaign period and Election Day itself will be dealt with more thoroughly in a subsequent report, to be issued in March. This interim statement is aimed at avoiding problems in the immediate aftermath of the elections and provides recommendations to the Royal Government of Cambodia and the National Election Committee to this end.

The Campaign Period

Violence and election irregularities have continued to mark the lead up to the February 3 commune council polls. While a relatively calm environment prevailed during the first week, a two-year-old child was killed on January 25 when gunmen opened fire on his father, a CPP candidate in Banteay Meanchey province. Several new deaths came to the attention of the Cambodia Office of the United Nations High Commissioner for human rights during this period, but it is not clear that these were election-related. Broadly, there was an increase in intimidation problems during the second week of campaigning. I shall report more fully on the situation during the campaign period in my next report.

To ensure human rights are protected and upheld in the aftermath of the elections Kampong Cham province deserves particular attention. Although the situation varies from district to district, this province has been more seriously afflicted by election-related crime than any other in Cambodia. Efforts by the authorities to rein in armed gangs operating in Tbong Khmum district have made some recent headway with several arrests being made. These are welcome developments. However, sustained action on impunity and violence is also required for the new commune councils to be viable. Five of the deaths that have occurred during the pre-campaign and campaigning period have been in this province. Funcinpec candidates in Srolop commune have been unable to sleep at home or conduct election activities free from fear. A gang believed responsible for the murders in Srolop commune on November 14, 2001 of Sam Rainsy Party and Funcinpec activists has continued to terrorise local communities. The line between political and non-political criminality has become blurred to the point where, irrespective of motives, incidents -- including accidental deaths -- are causing alarm among the electorate. That criminality and politics should overlap to this extent is a matter for serious concern. Violence and intimidation must not be allowed to frustrate the functioning of the new commune councils in the months ahead.

The Prime Minister's mid-January statements appealing for election calm, along with recent ministerial initiatives appear to have had good effect. The absence of serious violence during the first days of the campaign may be related to these. Recent arrests have occurred in at least two provinces, although these have not always been carried out in ways that accord with processes stipulated by law. Here the Special Representative makes several recommendations. First, it is important that judicial and criminal processes are conducted in full accordance with laws that are designed to protect the innocent as well as to punish the guilty. AS allegations of violence and intimidation and bring those responsible to account. Third, all arrests must be made in accordance with the laws in force and be based on substantial

incriminating evidence. Fourth, all trials should be held in accordance with internationally accepted fair trial standards. The constitutionally-guaranteed presumption of innocence should be respected in all cases. A central point here is that commune candidates and political activists must be allowed to exercise their elementary political rights, and be afforded complete protection, regardless of their political affiliation.

Accidental Deaths

Thus far the COHCHR has not found evidence linking several fatal road accidents that occurred during the campaign period to political crime. However, and as recommended in my January 11 report, the authorities must investigate such deaths thoroughly and without prejudice, and be seen to be doing so. Better cross-party cooperation would aid this process. More generally, it should be noted that when government officials declare a death to be non-political before it has been fully investigated, their act of doing so creates a bias that instantly politicises it. Tackling impunity requires that investigating authorities be allowed to reach their conclusions free of such interference.

Avoiding Post-Election Problems

During the national election in 1998, fear of retribution prompted a significant number of those candidates who lost to flee their villages and seek protection from party offices at the provincial level and in Phnom Penh. This pool of aggrieved people provided fuel for post-election protests. In light of this history and the violent way in which these protests ended, the Special Representative is very concerned about the potential for violence in some locales after the election. The government is urged to make an immediate and unequivocal statement that retribution against either winners or losers will not be tolerated. All political parties should exercise restraint so that the outcome of the elections is accepted without conflict. It is equally vital that the NEC, which is tasked with resolving complaints, is seen to be tackling these with transparency and fairness. No undue interference should be allowed to influence this process.

1 February 2002

V. Human Rights Watch Backgrounder, January 18, 2002



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CAMBODIA'S COMMUNE COUNCIL ELECTIONS A Human Rights Watch Backgrounder January 2002

As Cambodians head to the polls on February 3, for the first time ever they will be democratically electing their own local level representatives. For the last twenty years the leaders of Cambodia's 1,621 communes (administrative units consisting of four to seven villages) have been appointees of the ruling Cambodian People's Party (CPP). They are now to be replaced with popularly elected commune councils and commune chiefs. As well as marking an important step in the development of democratic institutions in Cambodia, the commune elections will play a crucial role in setting the tone for national elections slated for July 2003. They will also be the first polls conducted during a time of relative peace, and thus could have important ramifications for Cambodian democracy, rule of law and human rights.

The pre-campaign period has seen an increase in threats, killings, and other violence directed against opposition party candidates and supporters. Between January 1, 2001, and January 5, 2002, fifteen members of political parties running against the ruling CPP, most of whom were prospective or confirmed commune council candidates, have already been killed. 2001 has also seen allegations of widespread voter intimidation and vote buying conducted primarily by the ruling party. This backgrounder includes an overview of the Cambodian electoral process, provides details on human rights abuses in the run-up to the campaign, and assesses the government's lack of effective response to date to reported incidents of political violence and intimidation. The backgrounder ends with concrete recommendations for the Cambodian government and the donor community.

POLITICAL CONTEXT

Cambodia has not held local elections of any kind since the late 1960s, when only candidates from Prince Sihanouk's ruling Sangkum Reastr Niyum party could run for office. Commune elections, originally slated to be held after 1993 national parliamentary elections overseen by the U.N. Transitional Authority in Cambodia (UNTAC), have been repeatedly delayed. The 1993 elections and post-election political maneuvering resulted in a fragile coalition government between the CPP and the royalist Funcinpec Party that collapsed in a coup four years later. In 1998, a second parliamentary election was narrowly won by the CPP over Funcinpec, which was given a junior role in a new coalition. Cambodia's national political opposition is currently provided by the Sam Rainsy Party (SRP), which holds fifteen out of 122 seats in the National Assembly. However, the leaders of Cambodia's communes, who are very important players at the local level, remain appointees of the CPP, and many have been in position since the fall of

the Khmer Rouge in 1979.

Given the CPP's nationwide control of local leadership, it is hard to see why its leaders agreed to hold the commune elections at all. The most benign interpretation is that they recognize that the party's national strength has been weakened by the unpopularity of many of its long-standing appointees at the commune level. A less charitable interpretation is that they may think they can control the outcome. In support of the former, the CPP conducted controversial surveys prior to candidate registration to confirm which local leaders might hinder the party's election chances. The latter theory is supported by the growing reports of violence and intimidation directed against opposition parties. The period from January 1, 2001 to January 5, 2002 has seen the following human rights violations:

- Killings of fifteen activists and commune council candidates for the Funcinpec and SRP parties.
- 176 reported cases of intimidation, threats and harassment against activists and candidates running against the CPP, including twenty-one death threats. In addition, there has been one reported case of threats made against a CPP supporter, by a Funcinpec village chief.
- Twenty-two cases of arbitrary arrest or detention of Funcinpec and SRP party supporters.
- Forty-eight cases of property violation against Funcinpec and SRP parties, including forty-one cases where party signboards were damaged, destroyed or removed for fear of reprisal. One case of property destruction - the burning down of a party office - has been reported against a CPP office.
- Intimidation of voters, primarily through confiscation of voter registration cards and pressure to take oaths of loyalty to the CPP, in at least nine Cambodian provinces.
- Inaction by the National Election Committee, the Central Security Office for the Defense of the Elections, and other governmental mechanisms to address and penalize violations of the electoral law such as bribery, intimidation and violence.

The Commune Election Process

Under the commune election system, which follows a proportional representation model, citizens will vote from political party lists for a council of between five and eleven members, depending on the population of their commune. The first-placed candidate of the party with most votes assumes the position of commune chief and presiding councilor, and the first-placed candidate of the next most successful party assumes the position of deputy chief. A powerful yet unelected position is held by the commune secretary, an Interior Ministry appointee charged with assisting the commune councils in the administration of their duties.

When the Commune Election law was in its draft stages, a wide range of Cambodian civil society groups - including the three nongovernmental election monitoring organizations, Comfrel, Coffel and Nicfec - advocated strongly for a commune electoral system based on individual candidacy, as opposed to party lists and proportional representation. They contended that such a system would increase decision-making based on local issues, while reducing traditional problems of political party patronage, inter-party conflict and political violence. These suggestions were rejected by the Cambodian government.

With many of the smaller political parties that contested the 1998 national elections either folded or absorbed into their larger rivals, a total of eight parties are fielding candidates in the commune elections.

Party	Number of Candidates	Number of Communes	Coverage (Percentage)
Cambodian People's Party	24,948	1,621	100 %
Funcinpec	23,537	1,603	99 %
Sam Rainsy Party	22,717	1,501	93 %
Khmer Democratic Party	1,042	61	3.76 %
Chamroeun Niyum Khmer Party	100	6	0.37 %

Vongkort Khemarak Party	63	5	0.30 %
Khmer Angkor Party	38	3	0.18 %
Khmer Women's Party	18	1	0.06 %

HUMAN RIGHTS ISSUES IN THE COMMUNE ELECTION PROCESS

Human rights abuses against Funcinpec and SRP candidates and supporters were widespread throughout 2001, and have been increasing as the election date nears. Opposition parties, Cambodian human rights groups and international observers have all expressed grave concern at the climate of fear and intimidation experienced by both voters and candidates at the local level.

Political Violence and Intimidation

During the November 2001 visit to Cambodia of the U.N. Special Representative for Human Rights in Cambodia, Prime Minister Hun Sen made a call for non-violence in the election period, and pledged to do so fifteen more times before polling day. The latest such statement came on January 17, when Hun Sen said violence would not be tolerated and ordered authorities to arrest any perpetrators of political violence "no matter what political parties they are from or how high their ranks are." However, Human Rights Watch is not aware of any steps taken by the government to turn the Prime Minister's words into official policy to ensure the security of both candidates and voters.

Human rights organizations working in Cambodia have documented more than 267 cases of alleged violence and intimidation from January 1, 2001, through January 5, 2002. These include harassment, threats, arbitrary arrest and detention, restriction of assembly, property violations, destruction of party signboards, and numerous violent acts - including fourteen confirmed murders.

Evidence in some of these cases points to incumbent commune chiefs, who wield immense power at the local level because they often command the local militia and police. It's not difficult to send a message to villagers that if they vote the "wrong way," their security cannot be guaranteed or their village may be cut off from national level development assistance, such as new roads or schools.

The Sam Rainsy Party has been the primary target of rights abuses, with some two-thirds of all reported victims SRP members. Nearly a quarter of reported abuses have been against Funcinpec, and a further 7 percent have been directed at the general populace. Three reported cases have been of abuses against CPP members.

Violations have been reported in twenty-two of Cambodia's twenty-four provinces and municipalities. As in the 1998 national elections, there is a significant concentration of cases in southern and

northwestern provinces, regions that had a large Khmer Rouge presence in the 1990s. The U.N. Cambodia Office of the High Commissioner for Human Rights (COHCHR) estimates that some 40 percent of all reported abuses have occurred in these remote, military-controlled areas. Other locations of particular concern include the southern provinces of Prey Veng and Kandal, with numerous reported incidents of threats and intimidation, and Kompong Cham province, where more than a third of all suspected political killings have taken place. Alleged perpetrators of abuses are predominantly commune and village officials - many of whom are themselves commune election candidates - as well as local members of the police and military.

Opposition party representatives claim security concerns as the main factor in their failure to field candidates in fourteen communes throughout the country, rendering the elections there as one-party events. In a further 120 communes, only candidates from the ruling CPP party and national coalition partner Funcinpec are standing. Two communes feature only candidates from CPP and the Sam Rainsy

Party. Both Funcinpec and SRP representatives have stated that the pressures on opposition supporters have led to many candidate withdrawals. Some potential candidates have shied away from running, party leaders say, because there is too much risk in running for office.

This issue has been particularly acute when it comes to encouraging women to run for office. Despite each party pledging to promote women candidates, and the SRP even imposing a 30 percent quota for women, the proportion of female candidates from the eight political parties stands at just 16 percent (CPP 13 percent, Funcinpec 14 percent and SRP 20 percent). Of these, only a few are placed first on the party candidate lists, and therefore stand a chance of being elected commune chief or deputy chief. The killing of two women over two successive days in early January - a Funcinpec candidate in Kampot and an SRP candidate in Svay Rieng - is likely to raise the element of fear among women candidates.

Political Killings

Between February 10, 2000, and January 5, 2002~ nineteen Funcinpec and SRP party members, most of whom were prospective or confirmed commune council candidates, were killed. Fifteen of these cases occurred since the start of 2001 - three of them within the first week of January 2002 alone.

The killings included the following:

- On February 10, 2000, SRP member Chim Chhuon was shot dead in Kompong Cham province. A commune militiaman was tried for the murder and acquitted on August 8, 2000 - a verdict upheld at two subsequent appeals.
- On June 3, 2000, prospective Funcinpec candidate Pak Chhoeun and his wife Doung Mean were shot and killed in Kampot. The incumbent commune chief and a local villager were convicted of the murders on March 15, 2001, with two others convicted in absentia. However, the court rejected a political motive for the killing, attributing it to revenge for perceived acts of "black magic."
- On August 17, 2000, Khhim Nhak, a SRP member in Kompong Cham, was killed. The deputy commune police chief was convicted of the murder on January 19, 2001 and a local villager convicted in absentia.
- On January 3, 2001, SRP activist Phoung Phann was shot dead at his home in Kompong Cham. Court attempts to question the suspected perpetrator, a local member of the military, have so far proved unsuccessful.
- On January 14, 2001, prospective Funcinpec candidate Chhay Than was killed in Kompong Cham. Court attempts to question the suspected perpetrator, a local soldier, have so far proved unsuccessful.
- On June 30, 2001, prospective SRP candidate Uch Horn was killed in Kompong Speu. He had previously complained to two local human rights groups and the U.N. that he had received death threats. Two local residents, one a police officer, were convicted of the murder on October 12, 2001. However, investigations by human rights NGOs also point to the possible involvement of Uch Hom's village chief in the killing.
- On July 17, 2001, prospective Funcinpec candidate Meas Soy was shot and killed by two unidentified persons in Kompong Chhnang. A member of the military was subsequently tried for the murder, but acquitted for lack of evidence.
- On August 23, 2001, prospective SRP candidate Touch Voeum was shot and killed at his home in Siem Reap. Five suspects remain in custody for the killing, three of whom claim they were tortured during police interrogation. All deny the accusations.
- On September 21, 2001, Chhim Leang Sri, a prospective SRP candidate in Kompong Cham, was shot dead by three armed men. No suspects have been arrested.
- On November 5, 2001, confirmed SRP candidate Sam Sophear was beaten to death by five assailants in Battambang. Four suspects have admitted the killing, which they claim took place at the instruction of a government agent who remains at large.
- On November 14, 2001, SRP member Phoung Sophath was shot dead in Kompong Cham. Two hours later, Funcinpec candidate Thon Phally was shot dead in the same commune. Two members of the

military and a former militia member are suspected in the killing of Thon Phally, but to date none have been arrested. The proximity and similar methods used in these two killings suggest that they are related.

- On December 8, 2001, SRP activist Ouk Sao was shot dead at his home in Kompong Thom. To date no suspects have been arrested for the killing.
- On December 9, 2001, Funcinpec candidate Om Chileng was fatally wounded at his home in Takeo province after being attacked with a knife and a wrench. A CPP election observer has been arrested in connection with the killing.
- On December 14, 2001, the body of Ros Don, first-placed candidate on the Funcinpec party list for his commune, was found near a roadside in Siem Reap. Don had sustained a number of blows to the head. Investigations into his death are continuing.
- On January 4, 2002, third-placed Funcinpec candidate Long Kim Thon and her husband Soun Kroeun, a Funcinpec election observer, were shot dead in fields near their village in, Kampot province. On January 15 four people, including two commune policemen, were arrested in connection with the killing.
- On January 5, 2002, Touch Sean, as SRP candidate, was shot dead at her home in Svay Rieng province. Local authorities claim robbery as the motive for the killing. Three people have been arrested as suspects in the killing, one a district-level deputy police chief.

While there is no evidence that any of the killings have been directed from high levels of government, opposition party members say that the government's lack of serious and effective action to stop the killing, results in a climate of fear and intimidation for voters and candidates alike.

Voter Coercion and Intimidation

2001 has seen widespread reports of voter intimidation and vote buying, primarily conducted by the ruling party. The great majority of cases go unreported, with voters either unaware of their rights or

too afraid to accuse the perpetrators - typically local officials such as their own village or commune chiefs, and often backed by members of the police and military.

Beginning in May 2001, CPP party agents, local authorities and in some cases uniformed police officers carried out voter opinion surveys on behalf of the CPP, distributing forms with lists of names and photographs of possible candidates. These surveys are in violation of the Commune Election Law, which calls for government institutions and officials to be politically neutral.

Another prevalent form of voter intimidation is for government or party officials to confiscate voter registration cards from voters, record the numbers, and then return them. Since the start of voter registration on July 21, 2001, CPP officials have confiscated voter registration cards in at least nine provinces, with cards confiscated in entire districts and voters told to support the CPP. There has been one reported case of card collection directed at CPP members by one village chief. This is a tactic that was also employed in the 1993 and 1998 national elections; the intent appears to give voters the impression that their voting-day activity can be monitored and detected, and is explicitly prohibited by the Commune Election Law. Although cards are usually returned to voters after a few days, a report from Kien Svay district, Kandal province, indicates that cards collected in September 2001 were still being held by local authorities as of December 29.

Registration card collection is frequently accompanied by ceremonies at which voters are urged to swear allegiance to the CPP, sometimes by thumbprinting documents or drinking "oath water" to cement their pledge. These gatherings are often accorded additional legitimacy by being conducted in the local Buddhist temple. And as early as August 2001, electoral monitoring organizations received reports of vote buying that have continued through to January 2002. Each of the three main parties has been

reported as involved in vote buying, although the CPP has been cited in the great majority of cases, reflecting their control of resource allocation to the local level. For example, the election monitoring organizations report that in many areas commune chiefs who had received emergency flood donations of food, clothing and other materials distributed these goods to sworn CPP voters.

Examples of voter bribery and coercion reported by the Cambodian election monitoring organizations include:

- On August 11, commune authorities collected thumbprints from voters in nineteen villages of Samrong district, Takeo province, and asked them to drink oath water as a pledge to vote for the CPP.
- On August 29, the chief of Tropang Thom North commune in Takeo province summoned 404 voters to the local temple, where they were asked to vote for the CPP, again drinking oath water to seal their pledge.
- On September 5, village chiefs and group leaders in Koh Thom district, Kandal province, collected voter cards and made villagers pledge allegiance to the CPP with oath water.
- On September 26, the village chief of Chroy Somreung in Takeo province collected voter cards from villagers to record the code numbers.
- On September 28, military officials in Somreung Tung district, Kompong Speu province, told voters to vote for the CPP if they wanted to receive gifts.

Throughout September, in twelve districts of Siem Reap province, commune authorities including commune chiefs and village chiefs conducted a widespread campaign of voter card collection and forcing voters to thumbprint documents pledging allegiance to the CPP. Voters were informed that

those voting for the CPP could expect to receive gifts, and others could expect to face problems. All of the above cases were submitted to the National Election Committee in November 2001, but at the time of this writing, no investigations had been conducted.

Lack of Government Action to Stop Political Violence and Intimidation Cambodia's National Election Committee (NEC) is mandated by the Commune Election law to organize, oversee and monitor all aspects of the elections from registration of voters, parties and candidates to ultimately verifying the accuracy of the final tally.

The Commune Election law prohibits a number of acts such as confiscation of voter registration cards, threats and intimidation against candidates or potential candidates, use of force or intimidation to undermine confidence in the secrecy of the ballot, and pressure on citizens to sign oaths of loyalty to a particular political party. The law includes provisions for penalties to be imposed on election officials and ordinary citizens who violate the law. These include fines, revocation of voter registration cards, and if the violator is a candidate, prohibition from standing for election. If an election administration official violates the law, they can be dismissed or reprimanded. To date, however, not a single case has been seen where the penalty provisions set out in the Commune Election law have been exercised against offenders.

During the national elections of 1998, the NEC was widely criticized for its perceived partiality to the CPP and failure to act on cases of electoral irregularity. In particular, observers of the post-election period were highly critical of the fact that the NEC accepted a revision of the formula used to calculate seat allocations from voting figures, and in the post-election period it rejected every one of more than 300 complaints it received of electoral irregularity that favored the ruling party.

Some changes have been made in advance of the 2002 commune elections, with three representatives of Fucinpec and one from the SRP accepted onto the NEC. Composition of the Provincial Election Commissions and Commune Election Commissions has also seen some minor changes, although

insufficient to counter the CPP domination. Yet the NEC remains, in the words of one NGO leader, "a toothless tiger", and its inaction strongly suggests political bias towards the ruling party. At a minimum, it has shown itself unwilling or incapable of carrying out its role.

While the composition of the NEC is marginally more balanced in this election, it is still passive in terms of dealing with political problems, primarily referring any complaints of political violence to the Ministry of Interior. The Provincial Election Commissions, whose members are largely recruited from high-ranking officials of the government who tend to be CPP members, have proven in practice to be very partisan. While this partisanship may not be shown overtly, it is evident in the fact that when Provincial Election Commissions are asked to address a violation of the election law they rarely take concrete action.

The NEC has defended its failure to act on reported election violations by noting the financial constraints it faces, and maintains that very few reports by the election monitoring organizations or the U.N. are actually sent directly to the NEC. In addition, NEC officials state that many perpetrators of offences such as voter card collection and pledging ceremonies are unaware that their actions are illegal. According to NEC officials, many problems are resolved locally by provincial and commune election commissions, who convene community meetings to talk over problems and explain the proper electoral process.

The NEC has now placed a priority on completing a Code of Conduct for village and commune chiefs outlining their responsibilities under the law - a task that should have been undertaken long before voter registration. As of January 17 the Code of Conduct remained unfinished and undistributed, with just a few weeks to go before polling day. The NEC had previously pledged that it would be finalized before the official election campaign starts on January 18, and that future violations will be punished.

In August 2001, after heavy criticism about a rash of political killings from donor countries, human rights groups and the U.N., the government established a Central Security Office for the Defense of the Commune Elections. Presided over by Deputy Prime Minister Sar Kheng, it includes representatives from the interior and defense ministries, national police, military and the NEC.

On October 11 the Central Security Office issued a directive to local authorities, province, municipal and commune security offices to strengthen security especially for political parties and agents. It calls for government officials to understand and abide by the law, to be neutral, and to collaborate closely with the NEC. The directive specifically states: "If any incident happens, there should be an immediate investigation and collection of evidence to prove the case and prepare a report in order for the Court to impose the relevant sanction." Despite this proclamation, to date the body has been ineffective and has not conducted a single investigation.

Unequal Access to the Media

Access to the media, and in particular broadcast media, remains a severe problem for opposition parties in Cambodia. This could be a decisive factor in the commune elections because people will be voting for parties, which will rely on radio and television to get their message out, rather than individual local candidates. Only six of around thirty Cambodian newspapers that are published on a regular basis are not affiliated to the ruling CPP, and the CPP dominates ownership of television and radio stations.

A nation-wide survey published by the Center for Advanced Study and The Asia Foundation in 2001 found that television is the most powerful medium for reaching Cambodian voters, with 72 percent of those polled stating that television is the most widely accepted source for information about elections. However all of Cambodia's six national television stations are either state-owned, or privately owned by CPP affiliates.

Of the thirteen Cambodian national radio stations, only FM 102 (a nonpolitical channel operated by the

NGO Women's Media Center) and Beehive Radio (operated by the Beehive Social Democratic Party, which is not standing in the commune elections) are wholly free from CPP affiliation. Fucinpec managed to re-establish a radio station in 2001, but it remains closely linked to the government and its national coalition partner. The Ministry of Information has consistently rejected the Sam Rainsy Party's applications for a radio broadcast license.

Television and radio programming is consistently biased towards the ruling party, with extensive news coverage of CPP achievements while the other parties are largely ignored.

The Committee for Free and Fair Elections (Comfrel), a Cambodian electoral monitoring NGO, is monitoring television and radio broadcasts in Phnom Penh and three key provinces. It found that during the week of January 4-10 the airwaves were dominated by coverage of government activities (82 percent). The only political party granted airtime in the broadcast media that week was the CPP, which had forty-nine minutes on air.

For those not interested in news, a ninety-part radio drama series "Sun Under Moonlight" paints the life story of Prime Minister Hun Sen in glowing terms. Already broadcast once on Bayon Radio (a private station owned by Hun Sen), it is currently being re-transmitted on the CPP's Apsara Radio and regional stations, with episodes scheduled to continue until days before the start of the election campaign.

The few non-CPP media outlets that are able to function do so with a relative degree of freedom. No newspapers were closed by the government during 2001 and little or no action has been taken recently against coverage that is critical of the government or the CPP. However, the lack of opposition access to media, especially during the pre-election period, deprives the Cambodian electorate of vital information concerning the political alternatives open to them.

A further test of the freedom of expression for opposition party members relating to the commune elections should be evident in commune council candidate debates and "roundtables" planned for the campaign period. A joint initiative between the Khmer Institute for Democracy and the U.S. National Democratic Institute for International Affairs, will feature debates involving six of the eight parties participating in the elections, including the CPP, Fucinpec and Sam Rainsy parties. Although limited to just six communes, the existence of such debates represents an important step forward for the Cambodia democratic process.

Although each of the parties has agreed to participate in the debates, the NEC has refused to grant free airtime for them on state television. Airtime for the debates may be bought from private national TV stations; however, these private stations are under substantial pressure to refuse any election-related programming that has not first undergone NEC censorship. However the NEC has decided that it will allow pre-screened, national-level election "roundtables," organized by the election monitoring organizations and other non-governmental organizations, to be broadcast starting on January 18.

The NEC's media monitoring subcommittee has primarily focused on the political content of voter education materials produced by election NGOs, rather than lack of access to the airwaves by opposition parties during the election campaign. NGO leaders are occasionally featured on radio and television programs to discuss electoral issues. For example on January 9 the national television station TVK broadcast a seventy-minute roundtable discussion on electoral security organized by Comfrel together with the NEC. A daily voter education program produced by Comfrel, which started on January 8 and will continue for one month, is being broadcast on two different radio stations each day. Aired live, it will feature call-in questions from listeners.

Problems in Voter Registration

Cambodian election monitoring organizations charged that the voter registration period, which lasted

from July 21 to August 19, 2001, was both chaotic and partisan. Characterized by a lack of resources, lack of effective information dissemination, lack of flexibility on the part of the NEC to meet the problems that arose, and a reported tendency to favor supporters of the ruling party, it left an estimated one million potential electors (from an eligible population of just over six million) unregistered. The election monitoring organizations reported instances of registration stations closing early, threats made or money demanded of voters coming to register, and citizens turned away from stations unregistered after lengthy waits because of confusion, lack of trained registration workers and sufficient supplies. After requests from political parties and the election monitoring organizations, the NEC re-opened registration stations in some areas for an additional three days. However, this fell far short of the two-week re-opening demanded by the election monitoring organizations, and proved insufficient action to guarantee the right to vote of many Cambodian citizens.

The Cambodian election monitoring organization Comfrel, which monitored voter registration at 10,647 of the 12,378 registration stations, found "unacceptable" problems at twenty-nine stations, and reported a total of 7,477 technical irregularities at 3,711 different stations. These included:

- 819 cases of threats or intimidation of voters.
- 2,754 cases of non-neutral behavior by provincial and commune election commissions and registration officials.
- 1,011 cases where observers' presence was refused or accreditation cards confiscated.
- 206 cases of unidentified or ineligible persons being allowed to register.
- 275 stations where refusal and complaint forms were not been provided to voters.
- 27 cases of voters who had registered more than once.
- 87 cases of voter card confiscation by local authorities.

CONCLUSION

Cambodia's first local elections, which should be a unique opportunity for citizens to have an impact on decisions affecting their everyday lives, are taking place in a climate of fear and intimidation. Opposition candidates are afraid to stand; opposition supporters are afraid to vote with their conscience. The mechanisms put in place by the Cambodian government to ensure free, fair and secure elections have so far proved ineffectual and partisan. Yet there remains the chance to take decisive action if the election campaign is not to see further threats and violence. The international community must act now, taking advantage of its influential status supporting the development of Cambodia, if it wishes to see commune elections that live up to the name.

RECOMMENDATIONS

- The Cambodian Government should issue clear written instructions to government officials at all levels (national, provincial, district, commune and village), calling for an end to political violence, intimidation, coercion and other human rights violations, and setting out the penalties for transgressions. These instructions should be delivered at a national election security meeting, broadcast on national television and radio, and closely followed-up by government, civil society and the international community.
- The Cambodian government should support statements such as that made by King Sihanouk on January 17, when he urged voters not to be intimidated by threats or coercion when they cast their ballots. Government officials should make strong public statements to underscore the secrecy of the ballot, explicitly stating that voters should vote with their consciences and are in no way beholden to any pre-poll pledges.
- The National Election Committee should demonstrate independence and integrity by investigating all reported violations and electoral irregularities, exercising its powers of

sanction where appropriate. Donors should consider contributing towards the costs of the NEC's investigations. The Central Security Office for the Defense of the Elections should take concrete action to ensure the security of commune election candidates and other party members before, during and after the polling.

- The Cambodian government, Central Security Office and local authorities should ensure the security and freedom of expression for all participants in candidate debates proposed for the campaign period.
- The Cambodian government should extend full and unfettered access to broadcast media to all political parties during the campaign period, and candidate discussions should be aired on national television and radio without government censorship.
- The international community should increase its support to Cambodian civil society organizations, in particular election monitoring and human rights groups, as well as international observers, to effectively observe and report on the election period and any post-election violence and reprisals, and press for follow-up of alleged violations.

X. COMFREL's Pre-Election Assessment Statement, January 31, 2002

គុម្រែង COMFREL
Committee for Free and Fair Elections in Cambodia

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Dear Sir/Madam.

Please find below Comfrers Statement on Pre-Election Assessment.

Phnom Perth, January 31, 2002

Statement

On Pre-Election Assessment

Overall Assessment

Comfrel (Committee for Free and Fair Elections in Cambodia) has started to observe this commune election process from the drafting of this election law and has reacted through its lobby and advocacy activities in order to improve the process of this election. At the end of this pre-election period, Comfrel would like to give its own assessment as follows:

- Comfrel has been satisfied with NEC's pre-election efforts in conducting voter registration, candidate registration, election campaign and the preparation of the polling and counting day. Under the constraints of technical irregularities regarding its operation and funding, NEC has completed enormous tasks in a limited time frame. NEC and Election Commissions in some provinces and communes have responded in varying degrees to Comfrel's complaints and recommendations.
- Comfrel has been disappointed with NEC's failure to show its independence from the government in their weak decision to facilitate the different political parties to have access to the broadcasting media for their election campaign. According to article 132 of the commune election law, NEC has full power to use state-owned broadcasting media freely in order to inform the public about the election and to conduct voter education.
- Comfrel has shared strong concerns over any level of political violence for this pre-election period which counted many killings and intimidation towards the activists and candidates. Comfrel strongly condemns those unacceptable acts. Comfrel appreciated any measure taken by the security forces to arrest and punish some of the perpetrators of the killings, but we still doubt the seriousness of the arrests and punishments and we have not seen yet any law enforcement to punish the intimidation acts.
- Comfrel has observed in this regard the weak performance of all levels of Election Commission in dealing with complaints relating to political cases.
- The participation of women in the election is very low compared to the percentage of women in the society. Furthermore, the women candidates were not well protected.
- Comfrel considers as undemocratic the election in 14 communes where there is only one party list of candidate.

Comfrel emphasizes that any credible commune council elections are contingent upon an ongoing non-violent, free and fair process. Comfrel will continue its efforts in monitoring closely the polling and counting day and the immediate post-election period. Comfrel urges the Election Commission at all levels to conduct in a free and fair manner the election and counting. Comfrel has suggested the NEC and the government to elaborate a clear plan in establishing an effective mechanism in order to respond to the immediate post-election conflict and violence.

COMFREL's mission is to help create an informed and favorable climate for free and fair elections through lobbying and advocacy for a suitable legal framework, education to inform voters of their rights and monitoring activities that both discourage irregularities and provide comprehensive monitoring data to enable an objective, non-partisan assessment of the election process.

Thun Saray

First Representative

Board of Comfrel

In the morning of 31 January, 2002, Committee for Free and Fair Elections in Cambodia (COMFREL) has organized a press conference on Pre-Election Assessment in its Central Office.

A total of about 70 participants coming from NGOs members, journalists, reporters of local and international media and foreign embassies attended the conference. The conference was held to make evaluation on environment in the period leading up to the Sunday election.

If you need assessment supporting documents of the overview of pre-election period (15 pages), please do not hesitate to let us know or visit our Website. The statement and assessment documents have been circulated in the conference.

Thank you,
Media
Comfrel

Y. COFFEL's Assessment of Campaign Period, February 3, 2002

COALITION FOR FREE AND FAIR ELECTIONS

Commune Council Elections 2002 Assessment of Campaign Period

The 16 Provincial Offices of the Coalition for Free and Fair Elections (COFFEL) have provided a mixed report on the campaign period. The National Election Committee have worked well in terms of logistics, but have fallen short on allowing access to the media. Some areas were relatively stable and there were few reports. Other areas did experience problems, but local authorities and parties worked cooperatively to resolve them, which is a good sign for future polls. Still others experienced serious and unresolved issues, which have had a severe impact on the overall climate of the election.

The main problems noted by COFFEL observers were:

1. Breaches & Campaign Law
2. Poor conditions for campaigning
3. Intimidation & villagers in terms of casting their votes
4. Vote-Buying
5. Threats and violence against candidates
6. Deaths

1. Breaches of Campaign Law

The campaign period did not have an auspicious start, with all three of the major parties - the Cambodian People's Party (CPP), the (FUNCINPEC) and Sam Rainsy Party (SRP) - beginning well before the date specified by law. As the campaign progressed, all three were victims of, as well as accused of, all kinds of minor infractions. Arguments between supporters, tearing down of posters and misuse of loudspeakers were typical complaints received by COFFEL's Provincial Offices. We received no complaints about the activities of the minor parties for these, or any other, infractions.

There have been many complaints of local authorities acting in their official capacity while campaigning on behalf of the CPP. There were also complaints about the CPP using government facilities for campaigning purposes. As well as direct support of the ruling party, officials at local levels actively prevented the campaign activities of FUNCINPEC and SRP. In particular, was the widespread refusal to allow broadcast of recordings Sam Rainsy speeches to the National Assembly. There were no reports of local officials prohibiting campaign activities of the CPP.

2. Poor conditions for campaigning

In several cases, there was reported use of weapons in the hearing of opposition campaign events. These cases worked to create a heightened climate of fear in the affected districts. Many problems were exacerbated by the lack of distinction between state institutions and the ruling party. While we have been pleased to see Commune Election Committees acting effectively to resolve disputes in some areas, slow response times in others has served to reinforce the culture of impunity and to undermine the mandated neutrality of electoral authorities.

The neutrality of the National Election Committee in particular has been called into question over the issue of the Political Party Roundtable broadcasts. The NEC deliberately hampered access to information which would assist voters in casting a considered vote. The bungled handling of the issue worsened the

problem and has cast a shadow over the whole election.

3. Intimidation of Villagers

Local officials were responsible for the most open cases of intimidation and harassment of voters. In Kampong Speu and Kandal in particular, there were numerous reports of Village and Commune Chiefs collecting voter registration cards, asking villagers to thumbprints statements of loyalty to the CPP, or to join the CPP. Local people have been told that their lack of cooperation could result in their expulsion from the Commune. In two cases non-CPP villagers have been denied access to vital irrigation water, which is already seriously affecting crops. These types of complaints increased over the last days of the campaign.

4. Vote-Buying

The major three parties were all accused of engaging in vote-buying activities. Small amounts of cash, normally between 2000 and 5000 riel (50 cents to \$1.25US) were distributed by the CPP and FUNCINPEC, while all three parties distributed goods such as sarongs, flee, vitamins or petrol. By all reports, it was made clear to recipients that these 'girls' were exchanged for secured votes, rather than being freely given.

5. Threats and violence against candidates

All three major parties reported attacks against candidates and activists. The vast majority of the violence however, was directed towards opposition parties with most reports emanating from the SRP. Many candidates report having been threatened with death by local authorities or CPP agents, unless they renounced their candidacy.

6. Deaths

20 deaths of candidates and activists have been reported across the country. Suspects and motives are yet to be firmly established in most cases. While it seems likely that at least some of these cases are not political, slow reaction from local authorities in most cases has worked to maintain an atmosphere of uncertainty, which is feeding fear amongst voters.

Conclusion

Overall the climate of the election campaign has not been conducive to free elections, and this will be an important factor to consider in deciding COFFEL's final assessment of the poll. In some communes it seems that it is already past the point where the ballot can be declared free and fair. Nevertheless in others, efforts have been made by all concerned- authorities, candidates and supporters - to uphold the spirit of the law and to resolve disputes peacefully. We hope that in these areas, we will be able to endorse the result and allow local people to take the next step towards managing their own communities.

COFFEL strongly condemns the violence, threats and intimidation as well as all the irregularities we have outlined here. We have requested that the NEC investigate these irregularities and enforce the relevant laws.

For more information, please contact:

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Z. Joint Statement by COMFREL, COFFEL and NICFEC, February 12, 2002

COMFREL COFFEL NICFEC

Joint Statement on Findings of Pre-Polling, Polling and Ballot Counting Periods.

Phnom Perth, February 12, 2002

According to Comfrel findings on Feb 10, about 85% of 5 million registered Voters have voted for the commune council elections throughout the country. Thus, approximately 750 000 eligible voters have not cast their votes. We note that the rate of registration and voting for this election is down more than 10% for each compared to that of the 1998 election that was more than 90%.

Comfrel will put forth its observations on the pre-election, polling/ballot counting and post-electoral period. Comfrel has been receiving the completed observation report for five days now. The central office has accumulated 99% of the reports.

Overall, Comfrel believes that the commune council election was conducted in a positive manner, an opinion that has been shared by several election monitoring organizations. Despite, instances of technical irregularities and cases of political intimidation, the commune council election proved to be an event towards multiparty democracy. Although there were few candidates that ventured to present their political platforms, the ones that did proved to be fruitful for them and insightful for the public. Furthermore, more political parties have demonstrated dynamism in promoting their political platforms by waving banners, hats and passing leaflets to promote their candidates and parties. Having said the positive aspects that are tangible and sure indicators of Cambodia's development towards democratization, there were widespread violations that need to be analysed and addressed.

Coffel and Nicfec findings were similar to Comfrel finding cases.

On the Eve of Election Day

On the eve of polling day, Feb 2, 2002, there were various violations of which the main one was the illegal activity of campaigning for the elections, 128 cases were observed. It was observed that most of the political parties' campaigning was from the ruling party. The campaigns were conducted using both types of vote buying, such as the indirect (whole communities are given donations and gifts) and direct (individuals are given money for votes). This kind of infraction was widespread and carried out quickly throughout the country.

To a lesser degree, other technical irregularities were observed, mostly materials that were sent late and/or were kept in an unsafe condition and lastly, there was an insecure political atmosphere surrounding the station. Regarding the same infractions, there were 24 cases that occurred in Battambang and 10 in Koh Kong.

Polling Day

Although the commune election process was acceptable and well administered, there were cases of irregularities that occurred on polling day.

The powerful local leaders carried out political intimidation and threats to the voters (105 cases). Some cMlians came with guns and uniforms. Some were provoked in the line. Although most of these threats were verbal in nature, it created an insecure and menacing environment for the voters where it is highly probable that many voters submitted to the oppression.

Regarding the polling station officials, the electoral procedures were not totally respected. There were (560 cases) of technical irregularities defined as follows:

- confusion of official seals;
- ballot boxes were not present;
- the secrecy of the election was violated;
- electoral equipment was not well organized;
- finger was not put in the indelible ink

- * It has been confirmed that there was a mistake in the printing of ballot papers that has led up to the postponement of the election process in Prey Veng province.

Furthermore, there were 320 cases where the rights of the voters were obstructed by the polling officials. There were problems regarding voter cards and in many other cases the names of the voters were not found on the voter list on the polling day.

The actual polling day was in a favorable climate if compared to the last elections, in terms of the few problems reported. A relatively peaceful day saw some 70% of registered voters cast their votes without serious incident. Again there were some logistical problems, but many were successfully resolved at the lower levels. The greatest areas of concern were the continuation of patterns established in the campaign period; intimidation and illegal campaigning by commune officials that was again the major cause for complaint. Other infractions, especially concerning eligibility of voters, were reasonably common but isolated to some polling stations and communes and were not an indication of a wide-scale pattern of electoral abuse.

Ballot Counting Process

During the ballot counting process, irregularities occurred of which the following were reported:

- counting officials splitting into groups to count the ballots (5 cases);
- provocation by carrying guns or explosive materials and using threats or intimidation (20 cases) in the ballot counting stations;

and 76 cases were observed on the following irregularities:

- ballots were not dealt with in an orderly fashion;
- ballots were not shown to the observers or political party agents;
- if someone refused the validity of the ballot, there was no discussion on the part of the ballot counting official as to the validity of the ballots;
- the ballot counting process was not finished on time (12 cases);
- and frauds on ballot counting (57 cases). For instance, in Romchor commune, Ratanakkiri province, the chairman of CEC added more ballots during the ballot counting process.

* In 134 communes (which is almost 10 % of all the communes), CPP was the only one party being the absolute dominance of gaining all of the commune council seats. This means there was not one seat for any other political party. This is quite worrying as the newly established commune council will not have an adequate system of checks and balances. The purpose of the commune council election is to implement the multiparty democracy at the commune level.

* The provincial network observed that in two communes in Kampong Chain province, the people have joined into pro-political party groups which has caused political tension. The aftermath of the commune council election was overshadowed by the pre-election irregularities. There were some complaints made by a few political parties regarding the recent vote counting result.

* In two villages in Kampong Chain, the local authority has cut off the water as the village people have been supporting the opposition party.

* In a village in Bantmy Meanthey, the local authority has been verbally threatening the people who have been supporting the SRP.

Comfrel, Coffel and Nicfec would like to raise some constructive recommendations to the Royal Government of Cambodia (RGC) and the National Election of Cambodia (that deals with election complaints and post-commune election). The recommendations are as follows:

- The RGC should prevent discrimination and provide an effective instruction to all commune or relevant authority to immediately stop any violence or act against the pro-political party villagers.
- The RGC has to raise awareness on the newly elected commune council members on the theory and practice of good governance, freedom of expression, of association and of assembly.
- The NEC should at least use the disciplinary punishment against electoral officials committing infractions during the election process such as fraud on ballot counting.
- The NEC and the RGC must pursue thorough and concrete investigations into intimidation including the killings and violence that were reported to NEC during the election period.
- Regarding specific cases relating to pre-election, the NEC should investigate any political party that collected voter cards that are the private property of the cardholder and psychological intimidation such as the collection of thumbprints. Furthermore, NEC should investigate evidence of payments to voters around the country.
- Comfrel, Coffel and Nicfec will continue to cooperate with NEC and election commissions at all levels in their tasks of dealing with the complaints regarding polling and ballot counting day in any particular commune.

- Comfrel continues to work on the drafting of sub-decrees regarding the commune council functions and its governance performance.

For future election, Comfrel, Coffel and Nicfec insistently recommend to the RGC and NEC as follows:

- The first is the importance of the reform of the NEC and other electoral commissions into a more impartial and independent body.
- To make the voter registration procedure easier (increase registration time-limits) so as to increase the citizens participation.

The reform of the existing electoral system in order to establish a compromise between the proportional system and the direct system which would allow the independent candidates to contest an election rather than the wholly party list based present system. The fact that a candidate must be national party member in order to be qualified as a potential candidate should not be a legitimate reason for exclusion.

Comfrel, Coifel and Nicfec also affirm the necessity to endorse at least a 30 % quota for female in order to give the opportunity to potential female candidates to contest in the election. Furthermore, Comfrel recommends the political parties to promote the participation of women in the political arena and also to encourage female activists. Comfrel, Coifel and Nicfec also recommend the NEC to facilitate the procedure and to ensure that the political parties do not obstruct the efforts made by women who are attempting to run as candidates.

Comfrel, Coifel and Nicfec advocate the promotion of the people's awareness on the meaningful participation in the local development of their commune, particularly on human rights and freedom of expression and of assembly through voter education and public forum.

- Equitable access to the media must be considerably improved. The media should also play a more active role in voter education.

Comfrel, Coifel and Nicfec also strongly advocate the elaboration of an effective legal and independent institution, in cooperation with the NEC and other concerned parties, to carry out or enforce the punishments to those who transgress the law such vote buying and other electoral infractions. As the commune election was marked with the witnessing and reporting of incessant political intimidation, threats and vote selling to name a few, the NEC should act accordingly and improve the application of the law.

[End]

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AA. ANFREL Final Statement, February 15, 2002

Asian Network for Free Elections

- A special project of Forum- Asia -

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Final statement on Cambodian Commune Council elections

15 February 2002

The Asian Network for Free Elections (ANFREL), upon the invitation of the National Election Committee (NEC) and the Committee for Free and Fair Elections in Cambodia (COMFREL), has been present in Cambodia since December 2001. ANFREL monitored the pre-election environment in 9 sensitive provinces and on Election Day a total of 65 international observers were deployed across Cambodia. Observers visited all 24 provinces to monitor voting and counting in more than 400 polling stations.

Taken as a whole, ANFREL believes the Commune Council elections have been a positive step in strengthening democracy in Cambodia. We welcome the fact that the Election Day passed peacefully and without serious incident. However, ANFREL remains deeply concerned at the serious cases of violence and intimidation experienced prior to the election.

ANFREL would like to stress that the electoral process is not yet complete. Re-counts are underway in a number of communes, and there are calls for more. To date, the NEC has received 125 complaints, and many more have been submitted to provincial and commune election authorities. It is unclear how many of these have been settled. Equally important, only a few of those responsible for violence, intimidation, and murder during the pre-campaign period have been brought to justice. The electoral process will only be complete when these issues are settled satisfactorily.

ANFREL calls on the NEC to ensure that the electoral process is properly concluded. Appeals and complaints must be settled in a fair and transparent way that gives Cambodian people confidence in the democratic system. The people of Cambodia, local NGOs, the media, and the international community must maintain their vigilance. ANFREL will continue to monitor the situation.

In the long run, the Commune Councils elections will be judged on the difference they make to the lives of ordinary Cambodian people. What ultimately matters is the extent to which the new Councils serve the interests of the people they represent.

ANFREL calls on all political parties to work constructively in the new Commune Councils, to place the interests of their constituents above those of their party, and to demonstrate to their constituents that they are worthy of their vote.

In order for the new Commune Councils to make a significant impact on the Cambodian political landscape, it is imperative that the Royal Government of Cambodia clarifies the powers and responsibilities of the new Commune Councils as quickly as possible.

Concerns for the future

The 2002 Commune Council Elections constitute another step in establishing democracy in Cambodia, but there are significant concerns that must be addressed before next year's national elections.

- 1) ***Violence, intimidation and killing as well as corrupt campaign practices continue to be a significant feature of Cambodian elections.***

In the run-up to the Commune Council elections, 21 candidates and party activists and one domestic observer were killed in circumstances that raised the possibility of a political motive. In addition, intimidation of candidates and voters was widespread. Methods of intimidation included damage to property, physical attacks, and verbal threats. More subtle, but by no means less influential, was the taking of thumb-prints and the collection of voter registration cards. All major political parties distributed cash and gifts in an effort bind voters into an obligation to vote for them. Taken together, these abuses may have seriously undermined the ability of parties to campaign freely and the ability of people to vote according to their will.

2) *The Election Committees at all levels and the law enforcement agencies have not done enough to uphold election law by prosecuting those responsible for violence, intimidation, and other electoral abuses.*

Despite widespread reports of misconduct in the pre-election period, few of the many cases brought to the Election Committees at all levels have resulted in disciplinary action and criminal prosecution. Investigations into political killings and acts of violence also have serious shortcomings, while law enforcement officials are not willing to use their powers in cases related to electoral abuses and political violence. The effect is to perpetuate a culture of impunity and undermine the confidence of candidates and voters in the democratic process.

3) *Abuse of the monopoly of power at all levels and weakness of legal codes to prevent the ruling party from using this to influence voter choice.*

Officials at all levels of the administration, as well as officers of the armed forces and the police, have used their power to promote party interests and undermine voter freedom of choice. At the highest level, key members of the ruling Cambodian People's Party (CPP) have skillfully claimed sole credit for successful government policy. At grassroots level, village and commune authorities organized meetings prior to the elections to "educate" the people on which party they should vote for.

Some civil servants and security officers, together with CPP agents, extracted thumb-printed pledges of support from voters and recorded the serial number of voter registration cards with the implication that they would be able to track individual ballot. This problem is a serious threat to the concept of vote secrecy, universally held as the foundation of democratic elections.

4) *The international standards for free and fair elections related to the equal access of parties and candidates to the media have not been met. The media have also failed to fulfill their mission in informing the Cambodian population on the elections.*

While activities of the government and the CPP have dominated the newscasts on electronic media, very limited access has been given to the FUNCINPEC and the Sam Rainsy Party (SRP). Newspapers might offer a greater diversity of views but their impact on the voting public is limited mainly due to low illiteracy rates. Both electronic and printed media usually ignore small parties. For the people of Cambodia, it was unfortunate that the NEC restrictively interpreted election law that it did not have duty to ensure the coverage of electoral campaigns in the media. Given the limited publicity of the campaigns and of the platforms of political parties and candidates on TV and radio, decisions of the NEC to prohibit the broadcasting of the scheduled roundtable debates further reduce the chance for voters to make an informed choice at the polls.

5) *Technical irregularities, though generally inconsequential, provide the opportunity for cheating and electoral abuses,*

Polling station officials were sometimes lax in checking voters for ink prior to voting although voter cards were checked and the registers marked to prevent double voting. Generally, inconsistent standards for

determining validity of ballot papers were applied from one polling station to another. Unauthorized people were seen in or around many polling stations. In most cases such people included candidates, political party agents and local officials. Usually they did not appear to be interfering with the electoral process, but given the history of political intimidation committed by those associated with state powers, the visible presence such people might influence voter decision. Failure to follow procedures may also undermine the confidence of voters and candidates in the electoral process, especially after the Election Committees are found unable to settle complaints promptly, impartially, and transparently.

Recommendations

1) Violence and intimidation must be eliminated from the Cambodian political landscape.

ANFREL cannot accept candidates or political parties that resort to violence, condone it, or are ambivalent about it. To stop the vicious cycle of protracted violence in Cambodia's electoral politics, ANFREL strongly urges all political parties to respect people's aspiration for peace and democracy. Leaders of all political parties must take decisive legal and disciplinary actions against their candidates and supporters who engage in all forms of political thuggery.

After decades of civil wars and political conflicts, elections signify the unprecedented effort of the Cambodian people to establish a system of democratic government. To ensure peaceful, free, and fair electoral contests, the Election Committees must exercise their powers and take pro-active measures to uphold election law. Complaints about political violence and other electoral abuses must be investigated and settled promptly, impartially, and transparently. At the same time, the law enforcement agencies must show the strongest vigilance and commitment to exercise their powers in these cases. Those responsible for political violence and electoral abuses must be brought to justice and prosecuted. Only this will end a culture of violence and impunity.

Elections are people's democratic exercise. Cambodian people should vote to reject violence and reject politicians who use or condone violence.

In place of violence, the Election Committees, the Royal Government of Cambodia, NGOs and the media must work harder to promote a new political culture in Cambodia based on the principles of tolerance, fair play, mutual respect, and good citizenship.

2) The integrity of the electoral process requires administration by impartial Election Committees. Actions must be taken to ensure that elections in Cambodia are administered by a neutral body.

The NEC will be reformed later this year and there should be an open debate on the best way forward to make it an effective institution capable of preventing violence and electoral abuses, resolving complaints, and conducting its duties in a neutral and impartial manner. ANFREL calls for a new law to replace the articles establishing the NEC in the 1997 election law, setting out specific provisions for independence of the NEC as a neutral, non-partisan body responsible for the management of national, commune and other elections in Cambodia. Specifically, to ensure non-partisanship, political parties should be prevented from joining the Election Committees at all levels. The NEC should also strictly enforce the principle of transparency and impartiality in the selection of election officials at provincial and commune levels.

At present, the NEC and its subsidiary Election Committees have both administrative and court functions. ANFREL proposes for the creation of an independent Election Court to handle violations of election law promptly, impartially, and transparently.

If the reform of the Election Committees and the creation of an independent Election Court is not successful, ultimately Cambodia should consider extending the principle of caretaker authorities to national level to ensure a neutral political environment in the run-up to the polls as practicing in

Bangladesh and other countries.

3) *The need to review and strengthen election law and related regulations.*

The current election law is silent, ambivalent, or weak in a number of issues. Before the next national elections in 2003, a review needs to be carried out with the participation of NGOs and the public in general. One of the key considerations is a new electoral system that allows for a mixed system of direct election of candidates and proportional representation. According to consultations and surveys across the country by NGOs, people at grassroots level overwhelmingly favor a system of direct elections because it gives a better political representation for them in public office. This system would also be more effective in holding the winning candidates accountable to their constituents.

ANFREL is concerned at the number of unauthorized local officials and members of the armed forces observed in or around polling stations on 3 February 2002. Given the history of political intimidation and a culture of one party-rule in Cambodia, such people may have influenced voter decision in some cases. The NEC and the Royal Government of Cambodia should introduce measures to effectively prevent unauthorized local officials and security officers from entering into the perimeter of polling stations on the Election Day.

The NEC should take a lesson from the Commune Council elections and introduce new measures to tackle electoral abuses that happen outside the official campaign period, especially vote buying both in cash and in kind.

More checks and balances must be introduced on the role of civil servants and security officers in election campaigns. Serious actions should be taken by the NEC and the Royal Government of Cambodia to prevent officials at all levels of the administration, as well as officers of the armed forces and the police, from using their power to promote party interests and undermine voter freedom of choice.

4) *The technical capacity of the Election Committees and polling station officials must be raised in time for the next national elections.*

ANFREL observed that there were still too many technical irregularities in the Commune Council elections. Most of these were minor incidents, but they suggest that training for polling station officials and education for voters may not have been adequate, and that some regulations need to be clarified. ANFREL calls on the NEC to address these issues immediately. Otherwise, some of these minor irregularities could become serious in the national elections and may potentially lead to disputes or undermine voter confidence in the integrity of the electoral process.

5) *The necessity to NGOs as independent mechanisms to play an active role in promoting a free and fair electoral environment.*

The role of NGOs in monitoring the Commune Council elections has been restricted by the provision in the commune election law that prevents election observers from launching any complaint about the electoral process. Added to this, the commune election law stipulates that the NGO monitoring role comes under the powers of the Coordinating Committee for NGOs (NGO-CC) organized by the NEC. The vague roles of the NGO-CC stipulated in the law allows the possibility of manipulation that could compromise the independence of NGOs in monitoring elections, constrain activities through complicated procedures, and exert some measure of control over the monitoring and education activities of NGOs. ANFREL urges the NEC and the Royal Government of Cambodia to guarantee that the draft of procedures and regulations for the next national elections ensures easy procedures and safeguards the rights of NGOs to conduct independent monitoring and implement civic/voter education programs safely and effectively.

6) *More concerted efforts to implement civic/voter education programs are needed.*

The Cambodian people are entitled to a more meaningful democracy where elections focus on issues,

not money or intimidation. The NEC, the Royal Government of Cambodia, NGOs, and the media should implement civic/voter education programs emphasizing the secrecy of the vote and individual freedom to select a representative to serve in public office.

Given low literacy rates in Cambodia, the chance for voters to make an informed choice has been reduced by the limited publicity of the campaigns and of the platforms of political parties and candidates on TV and radio. It should be the main responsibility of the NEC to ensure fair and constructive media coverage of electoral campaigns.

Women constitute more than 50 percent of the total voting population in Cambodia, and 12,055 of the 75,244 candidates for the Commune Council elections were women. The numbers may look impressive, but they do not tell the whole story. Given the traditionally subordinate status of women in the society, all political parties have faced difficulties in convincing male candidates to step aside for women. Disturbing security situations have further discouraged a number of women from involving actively in the elections. More effective broad-based awareness and education programs to promote and support women representation and participation should be conducted by the NEC, the Royal Government of Cambodia, NGOs, and the media.

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BB. European Union Election Observation Mission Preliminary Statement,
February 5, 2002

PRELIMINARY STATEMENT

by Carlos Costa Neyes, Chief Observer, EU EOM Cambodia 2002

Phnom Penh, 5 February 2002: The EU Election Observation Mission (EOM) has been present in Cambodia since 19 December 2001. The EU EOM is led by Mr. Carlos Costa Neyes, a Member of the European Parliament and Vice-President of the Permanent Delegation of the European Parliament for Relations with ASEAN and South Korea, and deployed a five-person core team and 30 Long Term Observers in December.

On Election Day, the EU EOM co-Ordinated the largest group of international observers, some 120 persons who reported from all provinces in the country.

"Elections mark progress for democracy in Cambodia but also raise concerns"

The 2002 Commune Elections have marked progress in the consolidation of democracy in Cambodia. However, there are concerns regarding the conduct of the pre-election period.

It is encouraging that Cambodians are now able to elect their local representatives, and the preparations for election day and administration of the poll have largely been very well conducted.

The overall pattern on election day was of a well administered process with voters participating peacefully and in large numbers, with problems limited to isolated incidents. The presence of party agents and observers in all polling stations ensured the transparency of the process, and the good technical preparations for the election in the face of substantial logistical challenges and the good conduct of officials and voters on Election Day represent a strong base for future elections. Further, the large number of registered candidates and elected Council Members, and the large-scale participation of civil society in all aspects of the process is a positive factor for the strengthening of grass-roots democracy in Cambodia.

However, some of the practices observed during these elections might limit the democratic possibilities in Cambodia. During the pre-election period there were deaths of some candidates and party activists, intimidation of candidates and voters, inadequate enforcement of the rule of the law, restrictive interpretations of campaign regulations and inadequate and biased media coverage. As a result, the election campaign did not offer parties a fully free environment or equal opportunity and aspects of the pre-election period therefore fell short of international standards.

Democracy in Cambodia will only be further consolidated if the laudable political will to hold the elections and the strong statements by the government against election violence are matched by a determination by all concerned to ensure a free campaign environment and the full application of the rule of law.

The EU EOM would like to stress that the process is not yet complete, with results still being tabulated and electoral complaints still to be addressed. These aspects will be observed and must of course be satisfactorily completed according to the law. The post-election environment has thus far remained calm, which is encouraging and an important and constructive factor.

These elections have offered both positive and negative elements. If the negative elements are addressed and the positive are built on then the 2002 Commune Elections will represent an important contribution to the further development of democracy in Cambodia.

Election Administration

The elections were generally well organised by the National Election Commission (NEC) and subordinate commissions. However, whilst the technical aspects of the work of the NEC were encouraging, a number of its decisions raised concern, such as the initial attempt to prohibit party campaign materials and its cancellation of a series of election broadcasts. In this sense, the NEC interpreted its role in a far narrower and more restrictive manner than in 1998. This regression is a matter of concern.

The NEC will be reformed later in the year. It is imperative that the new body is both neutral and independent in both its composition and its work.

At the outset of the process, the EU EOM heard a number of complaints regarding voter registration. However, the explanation from the election authorities that whilst the registration process did experience some difficulties it had largely captured all those persons interested in being registered, seems generally credible. Observers found that though some groups of citizens, such as students and itinerant workers, may have found returning to their original place of residence troublesome and that on election day very small numbers of persons presented old registration cards, the identified shortcomings in the registration process were not significant. It is hoped that this registration process can now be built upon, with a permanent register established, enabling a more efficient and cost-effective procedure for future elections, and ensuring that all eligible citizens are registered to vote.

Pre-Election Environment

The registration of 75,655 candidates for these elections illustrates that freedom to participate did generally exist. Whilst the requirement for parties to provide lists of candidates twice the number of seats available in a Commune placed a burden on both parties and the election administration, the registration of candidates was well conducted. In addition, parties campaigned actively across the country, holding meetings with voters and presenting their programmes, albeit in a relatively low-key manner.

The deaths of a number of candidates and activists in the pre-election period raised serious concerns. Whilst some of the deaths were clearly accidents or resulted from personal disputes, it is also clear in some instances that the involvement of local-level officials, either civil or military, raised the possibility of a local political dimension to some of the crimes.

There were widespread reports of intimidation and threats against candidates, such as in Kampong Cham, Kampong Chhnang, Oddar Meanchey, and Koh Kong. These ranged from the destruction of property to direct threats against individuals. There was also an effort in many areas by local CPP officials to intimidate voters through the taking of thumbprints or by collecting voter cards to try to ensure their support. These cases of voter intimidation were reported across the country, but were noticeable in Kratie, Pursat, Kampong Chhnang, Kampong Thom and Kampong Chain. In addition, all parties engaged in the provision of gifts and services to voters as an inducement.

Whilst such practices were criticised by the electoral authorities they were rarely addressed and then only by facilitating deals between political parties. This was reported by observers in Kratie, Kampong Chhnang and Koh Kong. In Kratie, the CPP apologised for its actions, fully acknowledging that it had collected the cards from voters, yet still the PEC decided not to apply the law. The general failure to sanction parties created an atmosphere of impunity and failed to offer citizens the protection of the law. It is noticeable that in Kratie there were also reports of vote buying by the CPP even on the eve of the election.

The electorate and political parties need the protection of the rule of law in order to guarantee the freedom of the election and equal conditions for all. Impunity for offenders only serves to encourage illegal behaviour and increases the threat to vulnerable communities.

During the campaign the NEC initiated, but later withdrew, instructions to prohibit certain campaign materials. It is not advisable or desirable for electoral authorities to play such an intrusive role in the conduct of the campaign, beyond establishing the basic procedures and guidelines and responding to formal, reasonable complaints.

Extensive voter education programmes were offered by both civil society and the electoral authorities. However, there remains a lack of civic education, informing voters on the purpose of the elections and their rights and duties as citizens. Civic education is vital in order to ensure that voters are offered all the information they need to make a free and informed choice on election day.

Media Coverage

Electronic media coverage of the campaign was a major cause of concern. In general the media offered "very little coverage of the political campaign. The news coverage offered by the main TV stations focused extensively on the activities of government. When there was any coverage of the political parties it focused overwhelmingly on the CPP, which also benefited from the coverage of the activities of government.

EU EOM monitoring of the media showed that state TV and radio failed to meet their obligation to provide voters with adequate information on the election or fair and balanced coverage of the campaign. State TV devoted over 75% of coverage to government and a further 12% to CPP. In contrast FUNCINPEC received 2% of coverage and Sam Rainsy Party less than 1%. The President of the National Assembly received some 8% of coverage. Coverage by private Cambodian TV showed a similar bias. Private stations also declined to accept party advertising, apparently

fearing any involvement in politics.

National Radio gave some 80% of coverage to the government and 13% to CPP and 7% to the President of the National Assembly.

The NEC decision to prohibit the showing of the scheduled 15 special campaign programmes is an illustration of the tendency to limit the scope of campaign freedoms. In this regard, the Laws on Commune Elections and National Assembly Elections, which establish the functions of the NEC, were interpreted in a restrictive manner.

The situation with regards to media coverage of the elections is worse than in 1998, when the NEC interpreted its role in a more open manner and provided equal access for political parties. This aspect of the process is particularly worrying in terms of the forthcoming National Assembly elections and needs to be reconsidered.

Newspapers offered a greater diversity of views but their impact in the country is limited due to illiteracy rates, the cost and limited distribution possibilities.

Election Day

The large and peaceful turnout of voters on Election Day contributed to the very well organised and credible poll on 3 February, with polling station officials working hard to administer the process and party agents and observers being present in all polling stations ensuring the transparency of the process.

Some Communes did experience problems, but these were of a limited nature, including the delivery of the wrong ballots to some polling stations or the mis-printing of ballots in a few instances.

Observers reported that officials were sometimes lax in checking voters for ink prior to voting, but that voter cards were checked and the registers marked to prevent double voting.

The post-election environment remained calm, which is a positive indication for the election. Initial reports from the Commune Election Commissions indicate a fair tabulation of the results.

The EU EOM will continue to monitor the announcement of results and any complaints and appeals at the PEC and NEC levels, which are crucial elements in the process.

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CC. International Republican Institute Preliminary Statement, February 4, 2002



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**PRELIMINARY STATEMENT
ON CAMBODIA'S FEBRUARY 3, 2002
COMMUNE COUNCIL ELECTIONS**

BY GEORGE A. FOLSOM, PRESIDENT INTERNATIONAL REPUBLICAN INSTITUTE

IRI URGES CAMBODIA TO MEET INTERNATIONAL STANDARDS

February 4, 2002

The International Republican Institute observed the communal elections yesterday which were administered competently, but did not meet international standards. Election Day demonstrated that Cambodians have the capacity to meet these standards, but in truth, the Cambodian government took proactive measures to prevent them from rising to international standards. Nevertheless these elections represent a step forward by breaking the one-party system at the local level setting the stage for more accountable local governance.

A STEP FORWARD

IRI applauds the courage of the Cambodian people on February 3 to cast votes for commune councils. The faces of Cambodian men and women on Election Day revealed a people determined to develop a culture of democracy, destined to replace the existing culture of violence, impunity and corruption.

ELECTION DAY

At the local level Election Day was by most accounts a technical success. Although there were exceptions, polling officials generally executed their duties with integrity and professionalism. Well trained party agents and independent monitors watched over the election. Possible incidents of voter intimidation were witnessed, but were apparently not widespread or systemic. The notion, therefore, that Cambodia can only be viewed in the context of the Khmer Rouge, the subsequent decades of civil conflict, or the 1993 or 1998 elections has now been laid to rest. Cambodians can now work to meet a new benchmark of international standards.

ELECTIONS WERE NOT FREE AND FAIR

The pre- and post-election periods are vital to determine the quality of the entire election process, and thus whether or not the *elections were free and fair*. The pre-election period was characterized by acts of murder and intimidation against opposition activists, impunity for these acts, an uneven playing field for political parties, and a biased administration of the electoral law by the National Election Commission.

Impunity for political murders, dating back to early 2000, results from a lack of effort, not criminal sophistication. Failure to register one million of Cambodia's six million eligible citizens was not a function of capacity, it was a result of decisions to manipulate the registration process facilitating registration for certain groups and discouraging it for others. Censorship of the media and political speech and denial of broadcast rights were choices, not driven by immutable circumstances. Efforts to hinder domestic observers were not a necessity, they were a calculated obstruction and identified as such by many well respected international and domestic observers prior to this election.

The failure of these elections to reach international standards was the result of a lack of political will on the part of the Cambodian government - not a lack of capability. International standards can now be emphasized because Cambodians do have the capacity to administer elections with competence, as witnessed yesterday at the local level. Unfortunately, clear choices made by the Cambodian government thwarted the potential for an election that is a true reflection of the comprehensive will of the Cambodian people.

THE POST-ELECTION PERIOD

Today, we look forward from Election Day to the next phase of the election the resolution of disputes and the transfer of *real power*. There are several areas that cannot yet be judged:

First ousted commune chiefs must peacefully step aside in those places where they have been defeated. In 1998, many Funcinpec and Sam Rainsy Party activists fled their homes fearing for their safety following parliamentary elections. Every measure must be taken to guarantee their security.

Second, election disputes must be resolved using the legal means provided in the law. Legitimate complaints must not be adjudicated with bullets or ignored when politically expedient. They must be brought before election authorities in a fair, timely, and transparent way. The failure of the government to do this in the 1998 election resulted in bloodshed.

Third, all commune councils must be permitted to fully exercise the power granted to them under the Commune Administration Law. Refusal by outgoing commune chiefs to surrender the levers of power, or refusal by the national government to allow elected commune officials to operate freely in response to the will of their constituents is a betrayal of that trust.

Thus far, the Cambodian government has failed to produce implementing regulations for the operation of commune councils. Until proven otherwise, this failure will be considered to be an act of bad faith by Cambodia's ruling party. The power to write these rules must not be allowed to be an insurance policy on maintaining local power for the ruling party). The world, including international donors, will be watching closely to ensure that the Commune Administration Law is implemented in a fair, timely and effective manner.

BUILDING A CULTURE OF DEMOCRACY

The February 3rd elections has opened a door to build a culture of democracy at the grassroots, which now opens a

new phase through developing good governance at the local level and with the provincial and national authorities. This requires putting the needs of people first with clean and accountable government, peaceful resolution of conflicts, and a determination by commune councils to facilitate local political participation and economic development. For the first time, the long-suffering Cambodian people now have a ray of hope that the local officials who touch their everyday lives will respond to their needs for both local services and personal dignity. The newly elected officials have a responsibility to deliver for the Cambodian people, and the Cambodian people also have a responsibility to hold them accountable.

IRI will remain engaged in Cambodia in the building of democratic political parties and the building of effective local governance. IRI urges Cambodia to consider the flaws in this election process and accept international standards as the government prepares for the 2003 summer parliamentary elections.

DD. Statement of the Japanese Election Observation Mission, February 3, 2002

PRESS RELEASE

02-EC0009

Embassy of Japan Phnom Penh

February 5, 2002

STATEMENT of the JAPANESE ELECTION OBSERVATION MISSION

on Commune Council Elections in the Kingdom of Cambodia February 3rd, 2002

The Embassy of Japan established an Election Observation Mission headed by Mr. Gotaro OGAWA, Ambassador of Japan to the Kingdom of Cambodia to observe the 3rd February Commune Council Elections in Cambodia. The eighteen-member mission, comprising 4 officials from the Ministry of Foreign Affairs of Japan, 12 members of the Embassy of Japan and 2 from JICA, were deployed in 8 provinces; Kandal, Takeo, Phnom Penh, Kampot, Battambang, Kompong Cham, Siem Reap and Kompong Speu, to observe the election campaign and the voting and vote-counting processes on February 3rd, 2002.

The Embassy of Japan highly appreciates the generally orderly and non-violent atmosphere in which the first historical commune elections in Cambodia were held. It further commends the vigorous and tireless efforts made by the National Election Committee, the Provincial Election Committees, the Commune Election Committees, and the Officials and Staff of the Polling and Counting Stations and other organizations and institutions concerned with successfully implementing the elections despite various constraints and difficulties.

The Embassy of Japan would also like to praise the active participation of all the political parties who, together with the high turn-out, contributed to the promotion of grass-roots democracy in the Kingdom of Cambodia.

Although the Embassy feels that the general political climate during the election period did not undermine the credibility of the entire election process, some concerns raised by various organizations and institutions on the freedom of media coverage and acts of intimidation and violence should not be overlooked and on-going investigations should be thoroughly conducted.

The experiences and lessons learned should be a valuable asset in establishing more efficient electoral mechanisms and institutions for elections scheduled in the coming years.

Although the areas covered were limited, the Japanese Election Observation Mission witnessed no serious violations of the election laws in the polling and vote-counting processes and considers that the election was held in a free and fair manner that reflected the People's will in each commune/sangkat. The Embassy of Japan expects that the official result to be announced by the National Election Committee will be respected by all the political parties and that the allocation of seats will be completed without delay.

The newly elected commune councilors will play a vital role in the sustainable development of each commune/sangkat and, together with the commune clerks, will be the key actors in executing the decentralization policy laid out by the Royal Government of Cambodia. The Embassy of Japan sincerely hopes that the new councilors will grasp the opportunity and the responsibility to administer and develop each commune/sangkat for the better life of its people. The Royal Government of Cambodia and the international community are expected to assist with the sound management of the commune councils. In this context, the early implementation of the Chapter 7 (Commune Finances) of the Law on Commune Administration Management and the capacity building of the commune officials are the priority areas for cooperation and partnership.

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EE. United Nations Development Programme Electoral Team Paper,
February 1, 2002

UNDP Electoral Team Paper

Mistaken information is circulating concerning NEC role and duties relating to the electoral campaign and its media coverage. It is necessary to bring the following clarification:

The NEC has neither duty nor legal right to ensure the "coverage of the electoral campaign in state-run newspapers and TV".

The responsibility of informing the voters on how to make their choice between the parties does not lie with the NEC.

The NEC is not and should not be the vehicle of the electoral platform of political parties.

The only legal obligation of the NEC with regards to the State media is to *"organize and disseminate comprehensive educational program on the Commune-Sangkat Council Election"* (Art. 8.12.5.1 of the Regulations adopted to implement art. 132 of the Law on Commune Election).

There is no legal basis for the NEC to get involved in the preparation or broadcasting of a debate between political parties aimed at informing the voters about the substantive program of each political party.

The NEC oversteps its jurisdiction by getting involved in any process that has to do with the carving of voter's opinion on whom they should vote for. The information to the voters on the content, program, promises or intents of any political party is the exclusive responsibility of the parties themselves and should not transit through a NEC vehicle of any kind. Debates between political parties belong to the realm of the political campaign, not voter's education.

In that respect, one has to bear in mind that the exercise of democracy also entails duties for the electorate, that is to inform themselves about the choices offered to them, and duties for the political parties, that is to disseminate their program and ideas to the electorate to allow the informed exercise of choice. In the Commune election, the 75,000 candidates Of 8 different political parties throughout Cambodia should be on the forefront of voter's information about their program and the political platform of their respective parties at the commune level.

The Law on Commune Election, in its article 132, gave to the NEC a very limited power to use the State media for the purpose of education on the electoral process. It should use this power in the spirit of the Statute. The role of the NEC on the State media is to inform the citizens on how to vote, the freedom of their choice and the secrecy of their ballot.

The duty to provide voter's education as currently stated in the Law and Regulations does not encompass access to the electoral platform of all contending parties or "coverage of the electoral campaign". If Commune Election Law had intended to task the NEC to publicize and disseminate the political parties programs, there would be clear and specific stipulations to that effect. It is our view that NEC was not be involved in the preparation of a series of political debates between the parties. There are sound legal reasons for refusing to broadcast these debates under NEC's label,

not least that the Government could rightfully blame the NEC for exceeding its powers, jumping on the bandwagon of the political campaign and losing its neutrality.

Furthermore, the Commune election Law does not give any power to the NEC to control any media whatsoever, even the State-run TV and radio. The NEC has no power to ensure equal airtime for the

parties and candidates neither on state nor on private media. Actually, the NEC does not even have the power to direct the State TV to provide a slot of free airtime to each political party. This choice belongs only to the State-run TV and the Minister of Information. Early efforts from the NECs to obtain free airtime from the State TV on a voluntary basis have failed. Again, the only legal duty of the State-run media towards the NEC is to broadcast voter's education material for free.

Thank you

FF. "UN Agency Condemned for Lobbying Tactics," Phnom Penh Post,
February 15-28, 2002

UN agency condemned for lobbying tactics

BY RAJESH KUMAR

Several election observers have criticized the UN Development Programme (UNDP) for overstepping its mandate by lobbying the international community on behalf of the National Election Committee (NEC) on the recent controversy over equal media access for political parties.

In a communiqué sent to diplomats February 1, UNDP sought to "clarify" the NEC's role and responsibilities relating to the election campaign and its media coverage. It said the NEC had neither the duty nor the legal right to ensure electoral coverage in the state-run electronic media.

"The NEC is not and should not be the vehicle of the electoral platform of political parties," the communiqué stated. "There is no legal basis for the NEC to get involved in the preparation or broadcasting of a debate between political parties aimed at informing the voters about the substantive program of each political party."

It added that the NEC would transgress its jurisdiction by getting involved in any process of political broadcasts. When the Post contacted UNDP for comment about specific references to its statement, a spokesman said the organization was not prepared to comment on the matter.

Dr Lao Mong Hay, executive director of the Khmer Institute of Democracy, felt the UN body had overstepped its mandate by trying to protect the NEC from criticism over an important electoral issue, particularly when it had an interest in organizing the election and had sponsored the drafting of the commune election law.

"True, the [commune election] law does not explicitly mention the NEC's responsibility [for ensuring] equal media access for political parties," he said, "but programs like the televised round tables involving representatives from all the parties were initiated by the NEC itself. It even sought and received international funding to produce and broadcast those programs."

The whole controversy over media access apparently stemmed from a legal confusion. While article 73 of the law on election of

National Assembly members clearly stipulated that the NEC "shall take steps to publicize political messages at the request of a registered political party participating in the elections, based on equal and orderly access to media", the section was omitted from the law on commune council elections.

The observers, however, based their arguments on clause 10 of the new law, which stated that



"the power, functions and duties as determined in this law shall be assigned in addition to the ones delegated to the NEC in the law for election of MPs."

Some international election observers also took exception to the way in which the UNDP's statement was worded and emailed to Phnom Penh's diplomatic community.

They said it clearly smacked of a pro-NEC bias, and stated that the UNDP was supposed to advise or offer consultancy to the NEC on behalf of the international community. Instead, it seemed to be doing the opposite.

"In a country like Cambodia where democracy is still an evolving concept, assisting the voters to make an informed choice about the parties is crucial," said one Western observer. "For the next elections, the international community should perhaps pool its resources for producing and broadcasting the political programs [providing equal access to all parties] without routing them through the NEC."

The NGO Coordination Committee, a grouping of local election NGOs, condemned in its report February 10 inequitable media access as one of the electoral problems.

As a result, the ruling party had sufficient ability and means to monopolize the private and state media. In contrast, the report said, there were at least seven parties that had little or no access to the use of private and state media.

Mong Hay felt that in keeping with the spirit of free and fair elections and liberal democracy, there was a legitimate need to produce and broadcast political round tables to improve voter awareness.

"How can we give the voters an informed choice if the political parties don't get a chance to present their platforms in a party based [electoral] system?" Mong Hay asked. "When you demand the voters tick against the name of a party and not individual candidates, such [a restriction] sounds ridiculous."

Mark Stevens, deputy chief of the EU's observation mission, agreed that the NEC could have been "a little more creative" in its role on the issue of media access. In its reference to the NEC's decision to cancel a series of election broadcasts after they had been produced at a considerable expense, the EU report dated February 5 expressed concern over "this regression".

"In that sense, the NEC interpreted its role in a far narrower and more restrictive manner than in 1998," Stevens said, adding that the NEC had actively facilitated equal media access to the political parties during 1998 election campaign. Therefore, he felt the principles laid down in 2002 would have been useful in the 2003 general election.

After numerous about-turns, the NEC decided not to broadcast any of the roundtable programs or candidate debates produced by election NGOs in the 15-day election campaign period that ended February 1. That decision drew strong criticism from both local and international election observers and the diplomatic community.

US Ambassador Kent Wiedemann would not comment on the UNDP's statement, but did condemn the NEC's decision on media access.

"It was clearly wrong that the NEC did not fulfill the legal requirements and its pledge to provide equal [media] access to the political parties," he said. "If this kind of thing continues to happen in the 2003 general election, it will be a major blemish [on Cambodia's elections] and will not be acceptable to Cambodia's friends or to most donors."

