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THE 2003 NATIONAL ASSEMBLY ELECTIONS

This is the second report by the Special Representative of the Secretary-General for human rights in Cambodia on the National Assembly elections held on 27 July 2003. It incorporates the main elements of a pre-election report issued on 8 July 2003, and should be read in conjunction with the Special Representative's report to the 58th session of the General Assembly of the United Nations on the human rights situation in Cambodia.¹

The report examines the process and conduct of the elections by reference to the international human rights treaty obligations by which Cambodia is bound, particularly those standards contained in the International Covenant on Civil and Political Rights and which are enshrined in the nation's Constitution. These standards have been elaborated upon in a number of internationally recognised criteria for assessing whether elections are a genuine expression of the will of the people.² The report's recommendations are aimed at assisting the Royal Government of Cambodia and relevant authorities to build upon the positive gains of the election process, and at realising the rights of all Cambodians to freely express their views and to take part in political life.

These elections mark an important step in Cambodia's efforts to establish a multi-party democracy. Most observers agree that there was improvement in the technical aspects of election administration, lower levels of political violence, more equitable access to media and greater freedom of expression during the official campaign period than in previous elections, and that polling was conducted in a generally peaceful and orderly manner.

However, the establishment of a level playing field for all political parties, and of a fully transparent electoral process administered by neutral state institutions still encountered significant obstacles.

¹ *Situation of human rights in Cambodia*, A/58/317, 22 August 2003.

² The *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* establish that the authority to govern is based on the will of the people, as expressed in genuine and periodic elections. In resolution 46/137, the General Assembly emphasised 'that determining the will of the people requires an electoral process that provides an equal opportunity for all citizens to become candidates and put forward their political views'. The Inter-Parliamentary Union has also adopted a *Declaration on Criteria for Free and Fair Elections* (adopted by the Inter-Parliamentary Council, Paris, March 1994).

In the months prior to the official campaign period, arbitrary restrictions were placed on freedoms of assembly and expression, with widespread intimidation continuing through the campaign period, often involving local authorities, police, military and other state actors. In confronting complaints of electoral fraud, vote buying, intimidation and violence, in all but a few cases the National Election Committee failed to use its powers to impose fines and other sanctions. Although law enforcement officials took some steps to prosecute murders of political party activists, the investigation process and court proceedings fell short of minimum guarantees for a fair trial in the majority of cases.

Elections have come to be seen as an important yardstick by which a country's democratic development is measured. However, short-term observation teams tend to focus on the technical aspects of election administration - the conduct of electoral management staff during the voter registration, polling and counting processes - and political party and media activity during the official campaign period. The underlying areas of concern extend far beyond the immediate election context. Consistent patterns of political violence and intimidation; restrictions on freedoms of expression, assembly and association; impunity for those who commit serious crimes; poor law enforcement and a weak judiciary are not problems limited to the electoral period, and cannot be resolved alone by strengthening electoral laws, the National Election Committee and local level electoral authorities. Together they form the principal obstacles to the process of building truly democratic institutions and advancing the enjoyment of human rights under the rule of law in Cambodia, and are addressed in detail by the Special Representative in his report to the General Assembly.

Ultimately, the establishment of a genuine multi-party democracy which upholds the rights and respects the will of Cambodia's people will require a deep and continuing commitment to ensuring transparent, competent, neutral and accountable state institutions functioning under the rule of law.

General Overview

The National Assembly elections of July 2003 were the fourth elections³ held in Cambodia since the signing of the 1991 Paris Peace Agreements.⁴ The final election results saw the Cambodian People's Party win 73 seats (with a 47.3% share of the vote) in the Assembly, short of the two-thirds majority required to form a one-party government, with FUNCINPEC⁵ winning 26 seats (21.9%) and the Sam Rainsy Party 24 seats (20.7%). The previous National Assembly elections, held in 1998, produced a CPP-FUNCINPEC coalition government, dominated by the CPP.

Both the current Special Representative and his predecessors have reported consistent patterns of violence and intimidation as accompanying earlier elections in Cambodia. They have also raised concerns about the lack of neutrality of state institutions, including the police and military, and

³ The election held in 1993 for the Constituent Assembly, which became the first National Assembly, yielded the following results: FUNCINPEC won 58 seats (45.5% of the vote), CPP 51 seats (38.2%), Buddhist Liberal Democratic Party (BLDP) 10 seats (3.8%) and MOLINAKA 1 seat (1.4%). In the National Assembly election of 1998, CPP won 64 seats (41.4% of the vote), FCP 43 seats (31.7%) and the SRP 15 seats (14.3%). In the Commune Council elections of 2002, the CPP won control of 1,597 communes (61.1% of the vote), FCP 10 communes (21.9%), and the SRP 13 communes (16.7%).

⁴ *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*, signed in Paris on 23 October 1991.

⁵ FUNCINPEC is the acronym derived from the party's name in the French language: Front Uni National pour un Cambodge Independent, Neutre, Pacifique et Cooperatif.

the absence of equitable access to the broadcast media by political parties. From a historical perspective, the 2002 commune elections marked progress when compared with the national elections held in 1998 and 1993. The National Assembly elections of 2003 mark further progress, particularly with regard to the technical administration of the election. However, significant obstacles remain to the exercise by Cambodia's citizens of their rights to freely express their views and to engage in political activities, the hallmarks of a genuine multi-party democracy.

In his final report on the Commune Council elections of 2002, the Special Representative characterised the elections as a missed opportunity to set an example for future polls. He expressed his concern that patterns of violence, intimidation, and biased administrative decisions risk becoming accepted as the norm, and asked that the Government of Cambodia ensure that this experience was not repeated in future polls. He drew particular attention to four areas that needed to be addressed in order to enable the Cambodian people to genuinely express their will in the elections of 2003:

- The involvement of police, military officers and other state actors in election-related crime and human rights violations.
- The ability of the police, gendarmerie and judicial authorities to enforce the law.
- The degree to which the election authorities exert an enabling, rather than disabling, influence on political activities.
- Equitable access to the media for individual political parties, party leaders and other candidates.

The Special Representative reiterated many of these concerns in his pre-election report of July 2003, which also addressed the unreasonable restrictions on the freedoms of expression and assembly outside formal campaign periods in Cambodia, especially those imposed in the wake of large scale riots in Phnom Penh in January of this year, the use of excessive force by law enforcement officials to disperse unauthorised gatherings, and the involvement of officials at village and commune level in intimidation throughout the country during the pre-election period.

The Special Representative welcomes the participation of many national and international election observer missions in monitoring the elections, and concurs with their assessments that the 2003 election marked progress in the technical aspects of elections administration and the professionalism of the National Election Committee and its provincial and commune level commissions in this regard. The current NEC is undoubtedly a more professional institution than its predecessor, but greater confidence in the integrity of this institution needs to be built, including in the selection process of its members.⁶

The Special Representative welcomes the increased level of consultation that the NEC has employed in its work. For instance, the NEC followed a consultative process in drafting the Regulations and Procedures for the Conduct of the Election of Members of the National Assembly, and incorporated some of the comments from political parties and civil society organisations in the final regulations. The joint directive issued with the Ministry of the Interior on May 27 to Provincial Governors and Provincial Election Commissions to meet regularly with

⁶ The selection process continues to restrict nominations to those made by the Ministry of Interior, and subsequently confirmed by the National Assembly. See further, Human Rights Watch, *The Run-Up to Cambodia's 2003 National Assembly Election, Political Expression and Freedom of Assembly under Assault*, June 2003. For concerns about the recruitment of CEC/PEC members, refer to ANFREL, *Pre-election campaign observation report, Cambodia National Assembly Election Observation Mission 2003*, 24 June 2003.

political party representatives, NGOs, and local law enforcement officials to discuss election-related issues, must also be welcomed.

Most observers also concluded that the process for voter registration was relatively smooth, although concerns were raised by some about technical shortcomings that denied several thousand eligible voters the opportunity to cast their ballots⁷ and about reports that monks from Cambodia's largest Buddhist sect were directed not to vote by their Patriarch⁸ and could not register to vote because they did not receive the relevant documentation from their abbots.⁹

Most reports also note that the campaign period allowed for more open expression of political opinions than in previous elections, especially in urban areas and provincial towns. Political rallies during this period were largely free of incident, and were held throughout the country with the National Election Committee and its provincial commissions working efficiently with police and commune officials on the provision of security.

Polling took place on July 27 without major incident, save for a small explosion near the FUNCINPEC party headquarters in Phnom Penh and the discovery of two grenades with timing devices near the Royal Palace.

The technical conduct of the polls was satisfactory in most locations, although there were many reports of registered voters being unable to locate their names on voter lists. The counting process was assessed as being generally well-conducted, although political party observers complained of a lack of transparency in some counting stations. Reports issued by local election monitoring organisation COMFREL¹⁰, regional monitor ANFREL¹¹, the International Volunteer Observer team, the United States Long Term International Observation Group, the United Nations Development Programme, the European Union, the International Republican Institute, and the National Democratic Institute, among others, expressed satisfaction with the security and transparency of the process of voting itself, the transfer and counting of the ballots, and the security of the electorate on polling day.

The Special Representative is encouraged by the improved access for political parties to the broadcast media during the month-long campaign period relative to the inequality of access that exists at other times. While patterns of intimidation continued unabated throughout the official election campaign, there were fewer incidents of serious violence by comparison with the 2002 Commune Council election campaign. This perhaps reflected the effect of measures taken by the Ministry of Interior and National Election Committee to improve security during the elections, such as the training of high level police, gendarmerie and army personnel.¹²

However, the Special Representative remains concerned that the electoral environment was compromised in a number of ways. While the 2003 elections saw the first application of sanctions by the National Election Committee and its provincial commissions, the electoral

⁷ European Union Election Observation Mission, *Final Report*, pp 12-14; International Republican Institute, *Final Report*, 26 September 2003.

⁸ Point 4 of the decree of the Supreme Patriarch of the Maha Nikaya sect, Tep Vong, dated 15 June 2002, purports to prohibit monks from registering and voting during the election, in contravention of the Constitution and the *International Covenant on Civil and Political Rights*.

⁹ See for example the European Union Election Observation Mission, *Final Report*, p13.

¹⁰ The Committee for Free and Fair Elections in Cambodia.

¹¹ The Asian Network for Free Elections.

¹² On 4 June, the Ministry of Interior organized a seminar on election planning to train 700 high-ranking law enforcement personnel.

authorities were largely ineffective in dealing with serious breaches of the "Electoral Law".¹³ Freedom of assembly and expression were restricted outside the official campaign period. The rights of Cambodian citizens to freely express their political views and to engage in political activities were curtailed by widespread intimidation and coercive tactics often involving state actors, in particular local police and government officials affiliated to the Cambodian People's Party. The failure of judicial and law enforcement authorities to effectively investigate and prosecute serious violations of the criminal law reinforced the widespread lack of confidence in the criminal justice process, and the belief that those with political and economic influence are beyond the reach of law. The Special Representative again urges that such conduct must not become accepted as the norm for Cambodia.

A matter of particular concern to the Special Representative during the election campaign was the employment by politicians of several parties, including the Sam Rainsy Party and FUNCINPEC, of anti-Vietnamese rhetoric. On polling day, a large crowd engaging in threatening and sometimes violent behaviour denied well over one hundred Cambodians of Vietnamese descent the right to vote at a polling station in Kandal province, and reports have been received of continued harassment of ethnic Vietnamese people during the post-election period.

Finally, the Special Representative notes with regret the unacceptable interference in the electoral process from sources outside Cambodia.

Voter Intimidation and Coercion

Intimidation of voters and political party activists was observed throughout the country in the months preceding the election, with a particular concentration in some provinces,¹⁴ and continued unabated during the campaign period. Intimidation took many forms, including the collection or confiscation of voter registration cards or other identity documents by local officials, interference with and removal of party signboards, property destruction, economic threats, threats of renewed armed conflict, shots fired in the air, threats of physical violence and death threats. Attempts at coercion included forced oath-taking ceremonies typically requiring the consumption of "oath water" before a Buddhist monk, with voters promising their allegiance to the dominant party. While forced participation in such ceremonies appears to be in breach of the existing prohibition in the Electoral Law on the use of "coercion to secure a promise to vote for a candidate or political party", the law does not explicitly prohibit this widespread practice, and should be amended to do so.

The reports received by the Cambodia office indicate that pressure campaigns tended to be directed at the voting population and local activists outside the urban and provincial centres. Of 90 reports of harassment, threats or intimidation investigated by the Cambodia office between the start of 2003 and polling day, only five involved national-level figures. All the major parties were involved in distributing gifts and in committing breaches of the Electoral Law. However, reports received by the Cambodia office support the view that only the Cambodian People's

¹³ *Law on the Election of Members to the National Assembly* 1998, as amended in 2002. (The same law has also been cited as the *Law on the Election of the National Assembly*).

¹⁴ The Cambodia office received reports of voter intimidation from all areas of the country, with particular concentrations in the provinces of Banteay Meanchey, Kampong Speu, Kampong Cham, Kampong Thom, Oddar Meanchey, Siem Reap, Svay Rieng and Takeo.

Party used gifts and money to coerce people into joining and supporting the party and that the most serious violations were committed by those affiliated to the CPP.¹⁵

Local officials and law enforcement authorities at the village and commune levels¹⁶ were largely responsible for incidents documented by the Cambodia office. In a positive development, and in contrast to previous elections, there was a notable reduction in the involvement of military officers in such incidents,¹⁷ perhaps attributable to directives issued by the central authorities. A statement was issued by the Government indicating that the security forces and authorities at all levels must act with independence and neutrality in their duties.¹⁸

Village chiefs played a central role in many cases of intimidation and coercion, especially outside urban areas. Cambodian law requires that the Commune Councils elected in 2002 recruit village chiefs for each village in the commune, and that the Ministry of Interior must issue instructions concerning the formalities and procedures for such selections¹⁹. No such instructions were issued before the national elections, and the chiefs of over 13,000 Cambodian villages therefore remained unaccountable political appointees, many of whom had held office since 1979.

In some areas, voter coercion focussed on economic threats to communities - for instance village chiefs telling their communities that roads, bridges, agricultural inputs and development projects would be lost if the CPP were to lose office. Outside urban and provincial centres in Cambodia, a blurring of the line between the party and the state enhances the likely effectiveness of such threats, especially given the CPP's domination of local level positions and the frequent location of its offices on the same premises as local government offices. Infrastructure projects were identified as funded by the CPP rather than by the state or international donors, misleading the electorate to believe that such benefits derive from party loyalty. It should be noted in this context that a recent opinion survey on the attitudes of Cambodian voters revealed that "voters still view their vote primarily as currency for political patronage".²⁰

There were many reports throughout the country of supporters and activists of political parties other than the CPP being warned by local officials, including members of the police and military, that their political activities must stop, and that their continued political activism would result in physical harm to themselves and to their families. Surveillance and targeting of non-CPP supporters intensified in concert with the increased campaigning and voter education efforts of the political parties, often in co-operation between commune-level police and local civilian officials.

The Special Representative welcomes the joint directives of the Ministry of Interior and National Election Committee to local officials to obey the election law and regulations, and to carry out their duties with neutrality.²¹ However, insufficient commitment appears to have been

¹⁵ See further: Human Rights Watch, *Don't bite the hand that feeds you: Coercion, threats and vote-buying in Cambodia's national elections*, 18 July 2003, p4.

¹⁶ Including group leaders (of 10-50 families), village chiefs, commune councillors and commune police.

¹⁷ In only 8% of election-related human rights violations recorded by the Cambodia office prior to the 2003 elections were the primary suspects identified as serving military officers. This compares with 14% for low-level intimidation (and 26% for serious violations) in the equivalent period before the 2002 Commune Council elections.

¹⁸ *Statement of the Royal Government of Cambodia*, No 41, signed by the Prime Minister, 23 June 2003.

¹⁹ *Law on Administration of Communes* 2001, Article 30.

²⁰ The Asia Foundation, *Democracy in Cambodia – 2003*, 16 May 2003, p6.

²¹ *Joint Directives On the Cooperation of Local Authorities at all Levels in the Conduct of the Third Parliamentary Election*, National Election Committee and Ministry of Interior, No. 004 SNN, 27 May 2003; Directive of the Ministry of Interior to Provincial/Municipal Governors, No. 620 SCN, 11 July 2003.

shown to implementing the directives, or commencing criminal proceedings against relevant officials. At the time of writing, no local officials face charges for serious threats against political activists during the election period.

A directive issued by the Ministry of Interior on 22 July 2003, five days before polling day, prohibited village chiefs from acting as party agents,²² thereby preventing them from entering polling stations other than to cast their own votes. This directive was a welcome, if late, development and was observed in all but a few instances.²³ The Ministry of Interior also took action just before polling day to temporarily suspend from their duties three village chiefs who were linked to very serious instances of political intimidation in their communes.

Accountability for election-related violence and intimidation

The Cambodia office recorded many reports about the complicity of commune police in acts of intimidation or their refusal to investigate complaints involving village and commune officials.²⁴ Further, the complaints process provided for in the Electoral Law was complex and confusing in terms of providing what appeared to be a parallel structure for dealing with serious criminal acts with an election-related element, and thus facilitated "buck-passing". The weakness of law enforcement authorities, particularly commune police, was also apparent in the investigation of criminal acts related to the elections, including a number of killings.

The damaging effect on the general political climate of the murders and suspicious deaths of political party activists should not be underestimated, and is compounded by the failure of law enforcement authorities and the courts to respond effectively. The problem of impunity continues to adversely affect the ability of Cambodians to engage in political life without fear.

The Special Representative has noted that convictions have been secured in 10 of the 17 murders and suspicious deaths of political party activists and others involved in the electoral process, documented by the Cambodia office prior to the Commune Council elections on 3 February 2002. However, he remains concerned about the conduct of the investigations and prosecutions in many of these cases, and about the denial of minimum guarantees for a fair trial, raising serious questions about the reliability of some of the convictions.

During the period between the commune elections on 3 February 2002 and the end of the national election campaign period on 25 July 2003, the Cambodia office recorded a further 13 cases where known activists from the three major political parties were killed with suspected

²² *Directive prohibiting villages' chiefs and subordinates from acting as Political Parties' Agents*, No 07-1558/03 NEC.

²³ The Cambodia office recorded four cases where village chiefs were still serving as party agents, but in all instances they were removed after complaints by the relevant CEC to the PEC. European Union observers noted that, "however, it did not prevent some village chiefs from wandering around in the inner perimeter of polling stations, keeping a record of voters coming in and out. It actually made it more difficult for observers and other party agents to keep an eye on them": *Preliminary statement* (30 July 2003), p 3.

²⁴ For instance, a commune police chief from Kompong Cham was involved in preparing a "contract of resolution" that purported to prevent the complainant from pressing criminal charges in a case involving a death threat against a local FUNCINPEC activist. When a complaint was lodged with the provincial prosecutor, he formed an intimidating presence during district police interviews with the witnesses. In another case, a husband and wife complained that their village chief had threatened them with death and was in illegal possession of an automatic rifle. The commune police refused to investigate the threat and procured the couple's agreement to a written statement that purported to preclude the pursuit of criminal charges. In a case from Siem Reap province, four commune policemen including the commune police chief assisted a village chief in coercing FUNCINPEC members to thumbprint letters of resignation from their party.

political motivation²⁵, including that of a senior advisor to the FUNCINPEC Party, Om Radsady. Convictions have been secured in four of these cases, but the investigations and court proceedings have been flawed, again raising concerns about the reliability of some convictions.

In the context of the serious political deadlock after the election that saw both FUNCINPEC and the Sam Rainsy Party rejecting overtures from CPP to form a two-party coalition government headed by Hun Sen, it is a matter of grave concern that several political party figures were attacked or killed. On 29 September a FUNCINPEC civil servant was killed and another injured by a grenade at a district government office in Kampot province. On 13 October, a grenade attack on the home of a Sam Rainsy Party activist in Kompong Cham province killed him and seriously injured members of his family. On 18 October, a journalist was executed in a contract-style killing at the FUNCINPEC-aligned Ta Prohm radio station, shortly after the station was criticised by the Prime Minister for its coverage. Three days later, a woman was killed in a similar fashion in Phnom Penh during an apparent assassination attempt on her daughter, a prominent singer closely identified with FUNCINPEC, who remains critically injured as a result of the attack.

A case involving the killing of a 16-year old daughter of a Sam Rainsy Party activist in Kompong Cham province by a CPP-affiliated village chief on 6 August illustrates the manner in which political affiliation continues to have a significant bearing upon the administration of justice in a country that lacks an independent judiciary. After considerable pressure to apprehend the suspect, the prosecution was conducted very swiftly, and a trial was held on 16 September 2003 in the Kompong Cham Provincial Court. The trial gave rise to grave fears about the integrity, professionalism and independence of both prosecutors and the judge, with allegations that witness statements were altered and that the judge displayed actual bias in the courtroom. The accused was charged with voluntary manslaughter, rather than premeditated murder. He was acquitted of this charge and convicted of involuntary manslaughter, for which he was given a two-year suspended prison sentence. An appeal has been lodged with the Appeals Court, and it is hoped that the Supreme Council of Magistracy will also pursue appropriate disciplinary proceedings against the judge and prosecutor in this case.

The National Election Committee and the complaints process

The Special Representative remains concerned about the institutional weaknesses of the National Election Committee and the provincial and commune level electoral bodies in handling, investigating and resolving complaints relating to serious violations committed during the electoral period. In his final report on the 2002 commune elections and first report on the 2003 national elections, the Special Representative also noted the failure of the NEC and its provincial and commune level commissions to exercise their powers of sanction regarding breaches of the Electoral Law. While a few penalties were subsequently applied, the process remained largely ineffective in dealing with such breaches.

Chapter 11 of the Regulations and Procedures, dealing with complaints and the imposition of penalties, is unduly complicated.²⁶ In particular, the framework for dealing with serious

²⁵ One case involved a double murder of both an activist and his daughter, bringing the total number of deaths to 14. The Cambodia office investigated 45 deaths during the same period that were alleged to be politically motivated, finding the majority of them to be natural deaths, accidental deaths or murders where there did not appear to be a political motive.

²⁶ UNDP, *National Assembly Election in Cambodia*, p21.

violations of the Electoral Law and criminal acts contains a number of ambiguities and is too complex for local level electoral officials to administer effectively.

The NEC does not maintain records of all complaints that were made to Commune Election Commissions, only those which were referred to the relevant Provincial Election Commissions.²⁷ Yet, the available data suggests that almost two-thirds of the complaints lodged during the election campaign period were handled by CECs, with the overwhelming majority not proceeding beyond conciliation.²⁸

The Regulations stipulate that CECs should attempt conciliation only if the offence is "a minor one which is not mentioned in the Electoral Law and on which compromise can be reached". However, the official statistics and reports received by the Cambodia office indicate that many CECs did not operate within the limitations on their jurisdiction in this regard. Conciliation was attempted in some complaints relating to breaches of the criminal law such as violence and threats, an inappropriate procedure for such cases.

The Regulations further require that if a complaint is of a "purely criminal offence, not related to Chapter 11 of the Electoral Law" or that it relates to "an aggravated felony or misdemeanour offence also mentioned in Chapter 11 of the Electoral Law", the CEC must advise the complainant to lodge the complaint with the court²⁹. In the latter case, the CEC is also required to "push for an investigation to be immediately conducted" with the authorities in charge of security³⁰ and to provide its investigation report to the NEC through the PEC, although the Regulations are unclear as to what the NEC is empowered to do at this stage of the process. In the case of a breach *in flagrante delicto* of specified provisions³¹ of the Electoral Law, the CEC is to immediately refer the matter to the PEC³².

The Cambodia office, amongst others,³³ observed a lack of neutrality on the part of CECs in many cases where they attempted conciliation in settings and circumstances unfavourable to the victims.³⁴ In most cases, the complainant and respondent were asked to sign or thumbprint a "contract" that purported to preclude the victim's further right to lodge a complaint with the police in exchange for a promise by the respondent not to undertake further violations. The end result was that these attempts at resolving disputes resulted in those persons alleged to be responsible for violations not facing any sanctions, while the victims were exposed to further acts of intimidation or retribution.

There is also reason to believe that the total number of complaints lodged represents a fraction of complaints relative to the numbers of reported violations of the law recorded by human rights monitors and election observers during the pre-election and campaign periods.³⁵ Of the 349

²⁷ A total of 1,855 complaints were referred to the relevant PECs by their CECs (and, before the CECs were formed, by the commune councils) during the electoral period (information provided by NEC Legal Services Department).

²⁸ Of the 223 complaints lodged with the CECs during the campaign period, 53 complaints were rejected, 163 were conciliated, and 7 went through an appeal process: NEC Data, cited by UNDP, op cit, p51.

²⁹ Regulations, paragraph 11.1.3.3.5.

³⁰ Regulations, paragraph 11.1.3.6.

³¹ Regulations, Annex A and B of Chapter 11.

³² Regulations, paragraph 11.1.3.3.8

³³ US Long Term International Observation Group, *Summary of Post-Election Period, 2003 Cambodian National Assembly Election*, 7–15 August 2003, p4; International Republican Institute, *Final Report*, 26 September 2003.

³⁴ Sometimes in the homes or offices of those alleged to have committed the violations.

³⁵ For instance, COMFREL and NICFEC cite "213 cases of intimidation and threats" during the campaign (in contrast to the 92 complaints of threats lodged with the NEC); 595 cases of lack of neutrality by public officials (in contrast to 28 cases of "other" complaints lodged with the NEC which includes figures for lack of neutrality); and 208 cases of vote buying (there are no NEC complaints recorded for this category, although there were 54

complaints recorded during the campaign period, 333 were lodged by political parties, with only 14 complaints lodged by individuals and one complaint lodged by a non-governmental organisation.³⁶

This may be explained by a lack of awareness about available avenues of complaint, the public's lack of confidence in the neutrality and the standing of officials staffing the commissions at commune and provincial level, and a fear that complaints might result in retaliation from those responsible who wield power at local level, such as village chiefs, commune councillors and police officers. This lack of trust also appears to be shared by NGOs, who recorded large numbers of complaints without utilising the electoral administration bodies.

Of the 1,855 complaints referred to the PECs, eleven – all dating from the campaign period – were upheld, with penalties imposed in nine cases and warning letters issued in the other two³⁷. UNDP attributes problems with complaint handling at the PEC level to the "reluctance to issue decisions especially against officials or hierarchically superior authorities", lack of staff capacity and a cultural unease with formal legal hearings.³⁸

All eleven of these cases were appealed to the NEC, which overturned six of the decisions, and reduced the penalties in another two cases. In one additional case rejected by the PEC but upheld by the NEC, a commune council member was sanctioned for obstructing the work of COMFREL.³⁹ At the end of the complaints process, three fines of 5 million riel (approximately \$US1,260) had been imposed, one person's right to vote had been withdrawn, and two electoral officials had been suspended from their duties until the end of the NEC's current mandate.⁴⁰

However, the Special Representative is concerned that the penalties were not always imposed in a consistent or proportionate manner. The first penalty was imposed more than half way through the campaign, on July 16, by the Kompong Cham PEC. A man was fined 5 million riels in relation to a drunken altercation with FUNCINPEC party members at a campaign rally. The respondent was not politically affiliated nor did he hold any government position. Although he made a derogatory slur on a political party, it appears to have been more in the nature of a public order offence, not one involving political intimidation. That such a severe penalty should have been imposed for a minor offence involving an indigent, inebriated offender, when many serious offences alleged to have been committed by state actors went unpunished in Kompong Cham province, raised considerable doubts about the seriousness and effectiveness of the complaints process, as well as questions about equality before the law in Cambodia.

By way of contrast, the complaint lodged by the non-governmental organisation COMFREL provides an example of the system working well. It involved a complaint against a commune council member who prevented staff from renting video equipment to screen education materials. The complaint was rejected by the Kompong Cham PEC, and it was appealed to the NEC. Although the decision came too late to make a public example of the case before polling day, the complaint was upheld and the respondent faced a serious sanction, a ban from voting for 5 years.

complaints of "gift giving and distribution"): COMFREL and NICFEC, *Pre-Election Assessment Joint Statement*, 25 July 2003; NEC Data, cited by UNDP, *op cit*.

³⁶ United Nations Development Programme, *National Assembly Election in Cambodia*, September 2003, p52.

³⁷ Information provided by NEC Legal Services Department (*cf* NEC Official Data, cited by UNDP, *op cit*, p51).

³⁸ UNDP, *op cit*, p21.

³⁹ UNDP recorded a further 34 cases heard by the NEC relating to the polling and counting. UNDP, *op cit*, p53.

⁴⁰ Information provided by NEC Legal Services Department.

The Special Representative is concerned that the role of the electoral authorities at all levels in dealing with complaints has failed in many cases to create a fair outcome for the victims and in creating an environment where the right of individuals to undertake political activities without fear was respected. Furthermore, the reluctance of the police to investigate criminal acts that are already the subjects of complaints to electoral bodies can serve to aggravate the problem of impunity, especially for officials responsible of election-related violations.

The Special Representative urges a thorough review of the complaints system, and welcomes the request of the Chair of NEC for expert assistance on this issue.⁴¹ The complicated provisions of the current law must be simplified and streamlined. Thought should be given to restricting the NEC's powers of sanction to minor breaches that are clearly defined in the Electoral Law or Regulations and to specialised election-related offences that are not otherwise a breach of the criminal law. Violations of the criminal law such as complaints involving violence should fall solely within the jurisdiction of law enforcement authorities, with the police and courts at all levels increasing their efforts to thoroughly and impartially investigate those responsible for election-related human rights violations.

Restrictions on freedoms of expression and assembly

The Special Representative welcomes the lifting, during the official election campaign period, of the restrictions that were placed on freedom of expression and assembly in the months leading up to the elections. For the most part, political parties were able to openly conduct rallies and other campaigning activity freely without unreasonable constraints being placed upon them by national and local authorities.

Prior to the campaign period, a number of gatherings were not authorised on public order or national security grounds, the details of which were not provided by the authorities⁴². In a few cases where demonstrations took place without prior authorisation, the authorities used excessive force to disperse them.⁴³

The Special Representative is concerned by the re-emergence of restrictions on freedom of assembly after the end of the official campaign period. The small Khmer Front Party sought to conduct a demonstration in Phnom Penh in August to protest the election results, and was denied permission by the authorities. When the gathering went ahead, it was dispersed by police armed with weapons, including electric batons, and 21 party members were arrested and forced to sign statements that they would not demonstrate again. During November, a demonstration by garment factory workers was similarly dispersed through the use of excessive force by armed intervention police. The unjustified restriction of freedom of assembly constitutes a serious threat to the wider democratic process in Cambodia, and contributes to a "disabling" environment for the conduct of legitimate political activity.

⁴¹ Meeting with the Chair of the National Election Committee, Im Suosdey, 3 December 2003.

⁴² They included a demonstration planned by the Student Movement for Democracy on March 20, an NGO voter education drama project planned for several northern provinces in April, a planned march by representatives of women's organisations and victims of domestic violence to the National Assembly on May 26 and a parade to celebrate World Environment Day on June 5.

⁴³ For instance, members of the Sam Rainsy Party who marched to the National Assembly on 21 May were forcibly dispersed by riot police, with some minor injuries resulting. A demonstration at a garment factory on 13 June, resulted in the deaths of one factory worker and one police officer, and at least 20 other injuries.

As the Special Representative has stated before, he recognises the tensions between ensuring the rights to freedom of expression and assembly and preserving public order, but urges the Government to ensure that any restrictions of these constitutionally protected rights be limited to those that are necessary in a democratic society and are proportional and narrowly tailored to meet the objective of maintaining public order.

The Special Representative welcomes the initiatives of the Government to draft new legislation on public demonstrations, and hopes that this drafting process will be a consultative one. Such legislation should make explicit the criteria under which demonstrations can be restricted, consistent with the standards provided by international human rights law⁴⁴ which are incorporated into Cambodian law by the Constitution. Such legislation should also require that the authorities make public their reasons for any restrictions on assembly, a requirement contained in the existing law but rarely observed.

It is a matter of concern that the concept of an official campaign period has led to a misperception among many state actors and institutions that political party information cannot be disseminated outside this period, further compounding a commonly held belief that criticism of the Government may be construed as criminal incitement.⁴⁵ Cambodian citizens, including political party activists, have a constitutionally protected right to openly and directly criticise the government and its policies, and to disseminate information about political party platforms. Dissemination of such information by any person, political party, or organisation at any time is not only a right, but also a prerequisite for a well-informed electorate. The Special Representative welcomes the view expressed to him by the Chair of the NEC that this be made explicit through future amendments to the electoral law.⁴⁶

Media access and content

The media should play a key role in an election, to ensure that the electorate has all the necessary information at its disposal about parties, policies, candidates and the election process itself to make an informed and democratic choice. With high levels of illiteracy and low consumption of print media,⁴⁷ the majority of Cambodians receive information on political parties and elections through television or radio. A study on functional literacy of the adult population conducted in 2000 classified 36.3% of the population as illiterate and 26.6% semi-

⁴⁴ Article 21 of the *International Covenant on Civil and Political Rights* guarantees the right to peaceful assembly. Essentially, restrictions on freedom of assembly are prohibited except where they are imposed in conformity with the law; in the interests of limited purposes such as national security or public order, are proportionate in achieving the relevant purpose; and are "necessary in a democratic society".

⁴⁵ This perception is evident even where there is goodwill from the authorities, as in the joint directive from the NEC and the Ministry of Interior issued on May 27 to Provincial Governors and Provincial Election Commissions to meet regularly with political party representatives, NGOs, and local law enforcement officials to discuss election-related issues during the pre-election period. The directive also required local authorities to be notified in advance of private political meetings and the erection of party signs on private property. No justification was provided for this unwarranted level of surveillance, which breaches rights to freedom of expression, assembly and association.

⁴⁶ Meeting with the Chair of the National Election Committee, Im Suosdey, 3 December 2003.

⁴⁷ According to The Asia Foundation's survey *Democracy in Cambodia* (June 2003), just 4 percent of voters read a newspaper every day – and 62 percent never read a newspaper at all. No newspapers are published outside Phnom Penh, and the distribution of print media outside urban areas is poor: Helen Jarvis and Peter Arfanis, *Publishing in Cambodia*, December 2002, para 4-7.

literate.⁴⁸ In such a context, access to electronic media by all political parties is critical in ensuring an electorate that is adequately informed about the choices available to them.

The Special Representative has consistently raised concerns over the lack of equitable access to broadcast media in previous reports and in meetings with relevant Cambodian authorities. He welcomes some of the programmes undertaken during the election campaign period, notably the equal access opportunities for all parties on state-owned television and radio⁴⁹ and the equitable access "election news" programming.⁵⁰ However, media monitors recorded that, outside this programming, coverage on what should be public service broadcast media was biased towards the CPP and Government.⁵¹

Private television stations purported to avoid any legal obligations under the regulatory framework to provide balanced programming,⁵² by claiming that they would not cover the electoral campaign. Media monitors recorded that in reality the stations reported "almost exclusively" about the activities of the Government and CPP,⁵³ with an average of 95% of political news being dedicated to the Government and the Prime Minister on the two highest-rating television channels. Outside news programming, the CPP was the only party featured positively on any station,⁵⁴ with many examples of blatant bias.⁵⁵

In contrast to private television, not all private radio stations are affiliated with the CPP, which accounted for the greater diversity of coverage. While the presence of several independent stations, and one affiliated with FUNCINPEC, made for an environment that COMFREL described as "far more open and dynamic" than that of television, a culture of pluralism has yet to be fostered in Cambodia. Those stations that were politically affiliated failed to adhere to NEC guidelines, and were said to show "unreserved political bias" in favour of their respective parties.⁵⁶

Attempts by the National Election Committee to address the lack of neutrality amongst broadcast media, and the use of defamatory and inflammatory language by some politically-affiliated radio stations, were largely ineffective due in part to a lack of any real powers of sanction in this regard. An "ultimatum" issued ten days into the campaign period, threatening

⁴⁸ Ministry of Education, Youth and Sports, *Report on the Assessment of the Functional Literacy Levels of the Adult Population in Cambodia*, 2000. The literacy rate cited in UNDP's Human Development Report 2003 is 69%, based on official data from 2001, based on a figure that combines the semi-literate and the literate.

⁴⁹ A total of approximately 15 hours airtime on state-owned broadcast media was made available to each registered political party during the campaign period. Similar equal access provisions were made during the 1998 National Assembly election campaign, but not during the 2002 Commune Council election campaign.

⁵⁰ Airtime within the "election news" bulletins on state-owned broadcast media was awarded according to a formula based on the representation of the parties in the National Assembly. These bulletins, which ran from June 22 to July 25, were widely praised for improving access to political party information.

⁵¹ *Summary of Findings of Media Monitoring Unit of COMFREL* (for the period from June 16 to July 25), 19 August 2003.

⁵² *Regulations for Conduct of the Election*, Chapter 7, 24 April 2003.

⁵³ EU Election Observation Mission, *Final Report*, November 2003.

⁵⁴ With the exception of 1 minute's coverage of FUNCINPEC on TV3: COMFREL, *Summary of Findings of the Media Monitoring Unit* (for the period from June 16 to July 25), 19 August 2003

⁵⁵ TV5, the highest-rated station in Cambodia, broadcast "pro-CPP and anti-FUNCINPEC and anti-Sam Rainsy comedy sketches and CPP promotional songs and spots". Presenters and entertainers on Apsara TV were observed wearing CPP hats and T-shirts, while Bayon TV "repeatedly broadcast excerpts from highly critical newspaper articles about FUNCINPEC and Sam Rainsy Party": COMFREL, *Summary of Findings of Media Monitoring Unit* (for the period from June 16 to July 25), 19 August 2003

⁵⁶ EU Election Observation Mission, *Final Report*, November 2003.

"action to suspend the broadcast of that media outlet until the day the official election result is announced"⁵⁷ was not enforced.

Advances were made during the 2003 electoral campaign period. However, the inability of the NEC to regulate media outlets that breached the Electoral Law, the inequality of access to private television stations and the lack of neutrality of what should be public service media outside the campaign period all contributed to an inequality of opportunity for all political parties to communicate to the electorate.

How far media freedom and pluralism are respected during an election period is often an accurate index of respect for freedom of expression in general - itself an essential precondition for a functioning democracy. It is well established that the media must not be used as a communication or propaganda organ for one political party or as an advocate for the Government to the exclusion of all other parties and groups. The media have a responsibility to report on all aspects of national life and to provide access to a diversity of viewpoints. Further, a monopoly or excessive concentration of ownership of private media in the hands of a few is to be avoided in the interests of developing a plurality of viewpoints and voices.⁵⁸

The Special Representative encourages the Government to ensure that state owned television and radio stations serve the public interest and provide equitable access for political parties outside official electoral campaign periods, and to consider means to regulate the ownership of private media. The establishment of an independent broadcasting authority, as exists in many countries, would provide a longer-term solution to the issue of media access for parties and to the more general issue of ensuring a genuine diversity of views. Within the context of elections, a further policy decision needs to be made as to whether to provide powers of sanction to the NEC or the specialised broadcasting commission. The appropriate regulatory authority must be given real powers to enforce judgements against stations in breach of the Electoral Law.

Conclusion

The 2003 National Elections have to be seen as an important stage of Cambodia's road to a multiparty democracy based on the rule of law and respect for human rights. To make further progress, the competent Cambodian authorities should build on the positive gains of the 2003 electoral process and eliminate the problems that are noted in this report. There should be no sliding back as far as respect for human rights is concerned. The Special Representative sincerely hopes that the present political deadlock will soon be overcome. In order to make progress in solving its many problems, Cambodia urgently needs effective, transparent and accountable state institutions including a properly functioning parliament and government.

⁵⁷ *Ultimatum of the Directive for Media*, NEC, 7 July 2003.

⁵⁸ *Report of the Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression*, Mr. Abid Hussain, UN Doc. E/CN.4/1999/64 29 January 1999.

Recommendations

The following recommendations are aimed at assisting the Royal Government of Cambodia and relevant authorities to build on the positive gains of the election process, and to enable Cambodia's people to express their political convictions freely and without fear of retribution. Some of these recommendations have been made elsewhere, but are repeated for the sake of completeness.

The Special Representative recommends that:

- The police and courts ensure that investigations and prosecutions are conducted in a thorough and impartial manner in relation to all allegations of politically-related violence and intimidation, including the murder of political party activists and others connected to the election process. He urges that the minimum guarantees for a fair trial contained in Article 14 of the International Covenant on Civil and Political Rights be respected.
- In the conduct of future elections, the NEC and Ministry of Interior repeat the consultative process used in preparing the regulations and procedures for the 2003 National Assembly election.
- The role of the National Election Committee and its local level commissions be reviewed in relation to the investigation of complaints. The Electoral Law should clearly define what constitutes a minor offence that is suitable for conciliation by local level electoral authorities. The Government should consider removing the electoral authorities entirely from dealing with complaints that also involve violations of the criminal law, and show greater commitment and place more resources into ensuring that law enforcement authorities investigate and prosecute these cases thoroughly and impartially.
- The Government amend the Electoral Law to define clearly and sanction vote-buying and to explicitly prohibit forced allegiance-pledging ceremonies. As part of voter education efforts prior to future elections, further work is needed in educating voters that they are under no obligation to vote for a party that gives them money or gifts.
- The Government should not use the concept of an official election campaign period to restrict political speech and activity outside this period. Further efforts must be made through education and other means to ensure that Government officials and the general public are aware of every citizen's constitutionally guaranteed right to freedom of expression, particularly political expression.
- The Government ensure that restrictions on freedom of assembly are limited to those that are necessary in a democratic society, and that are proportional and narrowly tailored to meet legitimate objectives. Should such restrictions be necessary, the relevant authorities should provide clear and explicit justification. In the process of drafting a revised law on demonstrations, a consultative drafting procedure must be undertaken, and due regard given to applicable international standards.
- The Government and law enforcement officials ensure that all demonstrations are policed in a responsible and professional manner and that these gatherings are dispersed only if absolutely necessary and without the use of excessive force.

- The Ministry of Interior initiate a fully consultative process on procedures for the appointment of village chiefs, in accordance with the Law on Commune Administration 2001, and issue instructions on these procedures as a matter of priority.
- The Government take steps to establish an independent broadcasting authority, as exists in many countries, to monitor issues of media access to ensure a genuine plurality of views in the electronic media at all times.
- The Government revise electoral legislation to provide the NEC or a specialised broadcasting commission with clearly-defined powers to deal with relevant breaches of the electoral law by state-owned and private media outlets during the electoral campaign period.

December 2003