

COMMUNE COUNCIL ELECTIONS, 2002

January 2001 – January 10, 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.

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.

European Commission Data

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 Kampot 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 Kampot 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 lem, 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 Phuong Sophath, activists respectively for Funcinpec and the Sam Rainsy Party were shot dead in Srolop 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

- 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, Chumpoyoan commune, Khley village
- Soun Kroeun, Funcinpec, January 4, 2002
- Chumkiri district, Chumpoyoan 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

- Orn 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.

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.

- 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.
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COHCHR, 11 January 2001