



**STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE FOR
INTERNATIONAL AFFAIRS (NDI)
PRE-ELECTION ASSESSMENT DELEGATION TO CAMBODIA**

Phnom Penh, February 4, 2003

I. INTRODUCTION

This statement is offered by an international pre-election delegation to Cambodia, organized by the National Democratic Institute for International Affairs (NDI). The delegation visited Cambodia from January 28 through February 4, 2003. The purposes of this visit were to express the support of the international community for a democratic election process in Cambodia and to assess the political environment, and the political and legal framework for the upcoming July 2003 National Assembly elections.

The five member delegation was led by The Honorable Dick Thornburgh, former U.S. Attorney General under Presidents Reagan and Bush, former Governor of the Commonwealth of Pennsylvania and former Under Secretary General of the United Nations; and The Honorable Sam Gejdenson, former Member of the U.S. House of Representatives and ranking Democratic member of the International Relations Committee. The delegation included Andrew Ellis, Senior Advisor to NDI in Indonesia and former Vice-Chairman and Secretary-General of the Liberal Party in the United Kingdom; Munira Khan, founding member and current Vice Chairman of the Fair Election Monitoring Alliance (FEMA) in Bangladesh; and Peter Manikas, NDI's regional director for Asia programs and NDI's former resident representative in Cambodia.

NDI Senior Program Manager and former Cambodia Resident Representative, Eric Kessler, served as the delegation's technical advisor. The delegation was assisted by: Laura Paler, NDI Senior Program Assistant; and members of NDI's office in Cambodia, including Mark Wallem, Muth Channtha, Dominic Cardy, Tarikul Ghani, Jeff Kovick, Poeung Sam Oern and Preap Kol.

The delegation conducted its activities according to international standards for nonpartisan international election observation and Cambodian law. NDI does not seek to interfere in Cambodia's election process, nor, at this juncture, to make a final assessment about the overall process. NDI recognizes that, ultimately, it will be the people of Cambodia who will determine the credibility of their elections.

NDI is a nongovernmental organization that seeks to strengthen and promote the development of democracy worldwide. The Institute has organized impartial pre-election, election-day and post-election observations in more than 50 countries in Asia and around the globe. NDI has worked in Cambodia for more than a decade and has conducted election-related programming for the 1993, 1998 and 2002 elections.

II. SUMMARY OF OBSERVATIONS

Cambodians are approaching their third national elections since the signing of the Paris Peace Accords in 1991. This is the second national election in which Cambodians themselves have been responsible for the conduct of the elections. Unfortunately, many of the problems that emerged in previous elections, including in the commune council elections in 2002, remain today. These include a climate of impunity for politically inspired intimidation and violence, the perception that election officials are biased and unequal access to the news media for all political parties.

There have been some improvements since the last election. The newly constituted National Election Committee is better organized than in the past and is operating in a more transparent and participatory manner, but much more needs to be done if the public is to have confidence in the election process.

Violence and intimidation, in particular, have undermined public confidence in the election process and have created a climate of anxiety and fear among political and civil society activists, as well as many ordinary citizens. The government's failure to prosecute perpetrators of violence since the commune elections has only increased the perception that those who engage in these crimes are immune from the legal process.

The National Election Committee (NEC) still suffers from the perception that it is biased. The decision to include members who were aligned with the two parties in the ruling coalition, the Cambodian People's Party (CPP) and FUNCINPEC, but exclude the opposition Sam Rainsy Party (SRP), has understandably contributed to that perception. Additionally, the NEC is not viewed as independent because its members were nominated by the co-Ministers of Interior with no public consultation. The new NEC will have to take strong and proactive measures to ensure citizens that it will administer the elections in a fair and impartial manner. Business as usual, even when the NEC conducts itself in an efficient and professional manner, will not be sufficient to dispel the perception of bias. The NEC, in particular, should address complaints about the elections process in a fair and timely manner and should also try to anticipate problems and deal with them in a transparent and participatory way.

That Cambodia has not yet developed a strong legal culture and adequate legal institutions make it difficult to assure citizens that their rights will be protected in the election process and that violations of election laws will be vigorously and effectively pursued. The prosecution of those who engage in politically motivated violence and intimidation should be a top priority of the government. Such prosecutions would help deter future violence and help rebuild confidence in the nation's political system.

The problem of media bias has also re-emerged in the upcoming elections. Much of the electronic media is controlled directly or indirectly by the CPP. It is critical that alternative voices be heard in the coming elections so that Cambodian citizens can make an informed choice among the competing parties. The delegation therefore strongly urges the government to expand the number of licenses granted to local broadcasters to allow independent sources of information to reach prospective voters throughout the country. All local broadcasters should be permitted to present their programs free of politically motivated government interference. The government should also permit local radio stations to rebroadcast the news coverage provided by Radio Free Asia (RFA) and the Voice of America (VOA).

The upcoming elections, like the previous ones since 1993, are occurring in the context of the CPP's dominance of the political system. For 23 years, the CPP (or its predecessor, the

KPRP) has controlled the nation's civil bureaucracy and military, law enforcement and the courts, as well as the administrative machinery for elections. This legacy of the one-party state between 1979 and 1991, and continued CPP dominance, has made it difficult to distinguish between the CPP and the government.

Unfortunately, Cambodia's democratic development has not reached the point where the nation's laws and institutions ensure that political parties can compete in elections on a fair basis. Therefore, the delegation believes that the CPP-dominated government's monopoly on power carries with it an added responsibility to level the playing field for all contesting parties. Extraordinary efforts will be needed to increase public confidence in the elections and promote an open and democratic election process.

Only when Cambodians believe that the elections process is fair to all of the contesting parties will the public have full confidence that the promises of their 1993 Constitution, which pledges to restore Cambodia to a "multi-party liberal democratic regime guaranteeing human rights and the rule of law..." are being fulfilled.

III. THE DELEGATION AND ITS WORK

From January 29 through February 3, 2003, the delegation conducted meetings in and around Phnom Penh, and visited voter registration stations in Kampong Speu, Kandal, Phnom Penh and Takeo. The delegation met with King Sihanouk and a wide range of representatives of the Royal Government of Cambodia, including leaders of the ruling and opposition political parties; government officials and legislators; representatives of civil society, including domestic election monitoring organizations, nongovernmental organizations and journalists; and members of the international community. The delegation would like to express its deep appreciation to all of those who took time to share their views.

In addition, the delegation reviewed the Constitution of Cambodia, and the laws and regulations applicable to the upcoming July 2003 National Assembly elections.

International Standards for Democratic Elections

In addition to the requirements of Cambodia's Constitution, the amended Law on Elections and related laws and regulations, the delegation considered international standards for democratic elections and accepted practices that have emerged to meet such standards.

International standards for democratic elections are based on the propositions set forth in the Universal Declaration of Human Rights (Article 21) and in all other major human rights documents. These documents affirm that the authority to govern derives from the will of the people of a country, and their will must be demonstrated through genuinely democratic elections, conducted by equal suffrage and a secret ballot. Article 21 also provides that every citizen (regardless of gender), has the right to participate in government directly, as well as through freely chosen representatives. This requires the opportunity, without political discrimination or unreasonable restriction, to stand for office, as well as to freely cast a ballot.

The exercise of the right to democratic elections cannot be realized without the exercise of related fundamental human rights, including the right to freedoms of opinion, expression (including to seek, receive and impart information), association, assembly, movement, equality before the law and due process of law (including equal protection of the law and to an effective remedy for violations of rights), as well as to life, liberty and security of the person. These rights

derive from international obligations; they all apply directly through the Constitution of Cambodia (Chapter III).

In an election context, these rights have led to a number of international standards, that among other things, require:

- a sound legal framework and an impartial and effective election administration that conducts its activities in an open manner;
- a legal process that is impartial and capable of providing effective remedies;
- freedom to organize political parties without unreasonable or arbitrary restrictions and free of discrimination;
- an electoral environment in which political parties and candidates are free to express their messages to the public and have an adequate opportunity to do so, including equitable access to and fair treatment by the mass media, as well as the freedom and opportunity to organize peaceful assemblies and other demonstrations of public support and to move freely throughout the country to seek votes.

In addition, the electorate must be free and able to receive adequate and accurate information upon which to make an informed political choice and be free to exercise that choice without fear, intimidation or bribery. Also, the machinery of the state must remain neutral and its resources must be used for the benefit of the electorate, rather than for the benefit or detriment of any of the political contestants.

NDI's experience worldwide has found that confidence in an electoral system and a perception of fairness are as important as the letter of the law. Therefore, when serious doubts are raised about the fairness of an electoral system, additional safeguards - an added measure of transparency - must be introduced even if the law meets an otherwise acceptable standard. This is particularly true of Cambodia, given the dominant power of the CPP and a history of flawed elections.

IV. POLITICAL AND ELECTORAL LAWS AND REGULATIONS

Amended Law on Elections

The amended Law on the Election of the National Assembly of Cambodia defines the electoral framework for the lower house of the legislature. The National Assembly currently has 122 members, but this number will increase with population growth. Members are elected under a system of proportional representation, using Cambodia's 20 provinces and four municipalities as electoral units, and off a closed party list. Cambodia's election law was originally passed in 1997 and used for the 1998 election. This law had been amended for the July 27, 2003 National Assembly elections.

The new amendments to the law place election administration in the hands of a five-member NEC made up of so called "respected figures" recommended by the Ministry of Interior, nominated by the Council of Ministers and confirmed by an absolute majority of the National Assembly. This new NEC was sworn in on 13 November 2002 and replaces an 11 member NEC.

During the election period itself, election commissions are to be established for each of the 20 provinces and four municipalities, and each of the 1,621 communes. There will be officials appointed to each of the approximately 13,000 polling stations. While provisions for voter registration are included in the Election Law, administering voter registration is now under the purview of elected commune councils and their appointed clerks. While the commune clerks

are civil servants responsible to the Ministry of Interior, they are provided with an additional \$3 dollars a day from the NEC's budget for allowances.

The register compiled for the 2002 commune elections, which includes just under 5.2 million voters is used as a starting point for the compilation of the voter registration lists for the 2003 elections. People who are not on the register or who have moved to a different commune may be added and the list can be amended to remove those who have died or to correct errors. To qualify for registration in a specific commune, a person has to prove his or her identity, age (18 or over on polling day), Khmer nationality, and residence in the commune.

In contrast, the provisions of the law on campaigning remain vague. The law defines a 30-day election campaign period and enumerates general principles of equitable campaigning and access to media. It gives the NEC power to draw up a Code of Conduct for campaigning and makes specific prohibitions against threats, intimidation or violence against citizens or other parties.

Provisions detailing election violations and administrative sanctions have been added to the law. Sanctions in the context of the election are in addition to prosecutions stipulated in the criminal code.

A major and welcome amendment is the addition of provisions defining the seat allocation formula, by which votes cast in each provinces are calculated into seats won by each party. This addition seeks to prevent a recurrence of the controversy surrounding seat allocation in the 1998 elections, when these provisions were omitted from the original law and changes in the seat allocation regulations took place just prior to the campaign period.

The new NEC was chosen speedily but without transparency. Three of its members were CPP-affiliated and two FUNCINPEC-affiliated. As required by law, individuals who held positions within the political parties dropped their official connections to the party after being appointed to the NEC. SRP is the only party in the National Assembly that has no unofficial representative on the NEC. The NEC then, while required by law to be independent and neutral, appears to many to be neither. Although the newly constituted NEC has operated in a more transparent and participatory manner than its predecessors in drafting its regulations, there is still a confidence shortfall in public perceptions of the NEC because its composition came about through a closed process undertaken by the government alone. The NEC will have to make a special effort to dispel its credibility shortfall by proactively addressing election-related problems fairly and expeditiously.

Problems remain with the legal provisions related to campaign finance. Parties are required to maintain an accounting of their campaign sources and income as well as expenditures. While the NEC has the power to inspect these records, it is not required to do so. There is no allowance for public review of campaign finance documentation. The legislation also does not require an accounting of in-kind contributions, such as office space or equipment.

Paying a person to register or to vote for a particular party is prohibited. It is not clear, however, that the definition of the offense of vote-buying extends to paying persons for not registering or for not voting.

Political Party Law

The Law on Political Parties was adopted in 1997. It provides that all Khmer citizens are free to join parties and political parties are to receive equal treatment from government

authorities. Parties must register with the Ministry of Interior, demonstrating that they have at least 4,000 members and lodging a party constitution. Parties may not use a name, abbreviation or symbol which may be confused with that of another party, or a symbol associated with national or religious symbols, Cambodian kings or the Angkor Wat temple. In the past, controversies have erupted when splinter groups have claimed the name or logo of the party from which they broke away.

Parties are prohibited from receiving money from government or public bodies, NGOs or foreign institutions, except for formal state financing of parties. Although state funding of parties is authorized by law, no funds for this purpose have ever been appropriated. Party accounts must be deposited every year with the Ministry of Economy and Finance and the Ministry of the Interior.

Law on Press Regulations

The Law on Press Regulations was adopted in 1995 and establishes general principles of media independence, confidentiality of sources and gives the right of access to information with specified exceptions. It establishes obligations for journalists and also defines defamation and prohibits the publication of indecent material. In addition, it provides that the press may not publish information that may cause harm to national security and political stability. Electronic media is regulated through circulars issued by the Ministry of Information.

Election Regulations

The detailed implementation of the Election Law is defined in Election Regulations, which are divided into 12 chapters, and in the by-laws of the NEC. As a result of the late formation of the NEC, only nine of 12 chapters of the regulations have so far been adopted, including the provisions for electoral registration, the nomination of candidates and the regulations regarding both domestic and international observers.

The registration regulations include further details of procedures and documentation required by people registering to vote. The registration station in each commune consists of the commune clerk and, where necessary, an assistant, as well as the commune chief or another member of the commune council. The registration station is to operate for 30 days. It is located at the commune center and, if necessary, will travel to different villages within the commune for a maximum of 10 days. It also visits hospitals and other places where potentially immobile voters may be found. Detailed rules for the operation of registration centers are found in the NEC regulations.

Regulations still under debate include those related to campaigning and the media, as well as those concerning complaints and appeals. Contentious issues remain in these drafts, including the definition of campaign activities, the existence and content of provisions for balance in the state media's non-electoral programming, the possible regulation of paid access to private media and the detailed definition of the procedures and jurisdictions relating to complaints and appeals.

The by-laws of the NEC govern the holding of NEC meetings and the detailed staffing arrangements. The streamlining of the NEC's staffing structure, and the adoption by NEC members of detailed responsibilities which are geographic rather than sectoral, should enable the NEC to focus more on the whole picture of the elections and appears to be a welcome change.

V. POLITICAL ENVIRONMENT

An accurate and complete assessment of any election must take into account all aspects and stages of the electoral process, including the development of the legal framework, the voter and candidate registration processes, the pre-election period before and during the campaign, the voting and counting process, the results tabulation and the investigation and resolution of complaints. This delegation, therefore, cannot make a final assessment of Cambodia's election process at this time. At this time, however, the delegation can make preliminary observations and recommendations.

Lack of Confidence in the Political and Electoral System

Since the signing of the Paris Peace Accords in 1991, Cambodia has conducted national elections in 1993 and 1998, and in 2002 organized for the first time elections at the local (commune) level. The 1993 election was organized and implemented by the United Nations Transitional Authority for Cambodia (UNTAC). The 1998 and 2002 elections, however, generated a number of problems that marred their integrity and threaten to undermine the integrity of the upcoming July 2003 National Assembly elections as well. These problems, widely cited by both international and domestic organizations, include biased election authorities at all levels, a lack of equitable media access to all political parties and the existence of a climate of impunity that has emerged as a result of a lack of effective investigation and prosecution of those alleged to have engaged in election-related violence and intimidation.

Recurrence of Violence and Intimidation (Climate of Impunity)

The failure to prosecute those accused of election-related violence and intimidation has consistently been singled out by both domestic and international organizations as one of the most pervasive problems marring Cambodia's earlier elections. As NDI and other organizations have stated in previous assessments, the failure to prosecute those accused of crimes under Cambodian law has created a climate of impunity that undermines the integrity of the overall electoral process. If Cambodian authorities do not impartially investigate, make arrests and undertake prosecutions in these cases, potential violators will not be deterred and the quality of elections in Cambodia will suffer as a result. The perpetuation of violence and intimidation in Cambodian elections contributes to a climate of anxiety and fear among political and civil society activists, as well as many ordinary citizens, and is already a worrying feature of the upcoming July 2003 elections.

Several Cambodian election monitoring organizations, NGOs and political parties with which the delegation met condemned the level of politically motivated violence in the lead up to the elections. The United Nations Cambodia Office of the High Commissioner for Human Rights (UNCOHCHR) has documented 17 killings, which they consider politically motivated, between January 1, 2001 and the February 3, 2002 commune council elections. Since the commune elections, the UNCOHCHR has recorded 10 additional killings of political activists, including five SRP activists, four FUNCINPEC activists and one CPP activist. In addition, on January 28, 2003, the UNCOHCHR submitted to the National Election Committee (NEC) a list of seven cases, involving 34 SRP party activists who have experienced intimidation during their voter education efforts. Many of these cases involve brief detention and arrests of activists encouraging people to register and the confiscation of voter registration lists. Since the commune council elections, there have been no prosecutions in any of these cases of violence or intimidation.

Inseparability of the State and the CPP

State resources should be used for the benefit of the citizenry as a whole, rather than for the benefit of individuals or one political party. The legacy of one-party rule between 1979 and 1991, and CPP control of the state thereafter, has effectively led to the merger of the party and state. The civil bureaucracy, state-owned media outlets, law enforcement agencies, the judicial system and the military are all under the control of officials who are members of the CPP. The inseparability of the state and the CPP leads to a situation in which the potential misuse of state resources for the purpose of the ruling party in running an election runs high. In previous elections, observers have noted this trend and the delegation recommends that a clear separation between CPP and the state be enforced. For example, persons who use state resources to support or oppose any candidate or party, in violation of the law, should be prosecuted and punished. Also, the government should instruct all public employees, especially the police, to enforce the law in a fair and impartial manner.

Rule of Law

Cambodia has not yet developed a strong rule of law culture and an adequate legal infrastructure. It is, therefore, difficult to assure citizens that their rights will be protected in the electoral process or that violations of election laws will be vigorously and effectively pursued. Further attention to the integrity of the legal process should be a priority for all who are interested in strengthening democracy in Cambodia. This will require greater professionalism throughout the justice system and the absolute independence of the courts. Encouraging the development of the rule of law would also help to foster greater democracy in the long-term.

VI. OBSERVATIONS ON THE POLITICAL AND ELECTORAL PROCESS

A. Political Parties

Registered Parties

The Ministry of Interior has registered 45 political parties and there remain 15 active but unregistered political parties. Among the registered parties, three have emerged with large bases of support of more than one-half million voters each, namely CPP, FUNCINPEC and SRP. While several of the smaller parties have already pledged to cooperate with larger ones, there are allegations that some other smaller parties have been created with the sole purpose of splitting the support base of opposition parties. Still other parties have already stated publicly that they do not plan to run candidates in the upcoming elections. Observers have estimated that 10 to 20 political parties will likely compete.

Candidate Selection

Seniority and financial contributions from prospective candidates play a role in the parties' candidate selection process. Making large financial contributions a pre-requisite for candidacy not only generally discriminates against capable and effective candidates who lack substantial financial resources but also potentially disadvantages women and younger candidates. These categories of individuals, while potentially having a large support base among voters, traditionally have a small financial base from which they could support the parties' activities.

In a society such as Cambodia, in which women have been particularly victimized and marginalized, it is critical to increase their involvement in the political process. It is important, therefore, that all of the parties make strong efforts to ensure that women are included on their

candidate lists. The parties should make more efforts to place women near the top of their lists so that women are more likely to be elected when their parties are successful.

FUNCINPEC and SRP both have women caucuses within their organizations and have emphasized training and running women candidates. The delegation was told that CPP is currently deciding what level of priority will be placed on running women as candidates.

B. Media Access

Under draft regulations, the NEC would provide four hours per day of equal media access for political parties on state-run media, continuing a system used in the 1998 election that was widely praised. There remains a concern, however, over approaches to ensuring that parties receive equal and fair coverage on the remainder of time on state-run media, and guaranteeing equitable access to privately-run media. Fairness to all political parties is especially important on regularly scheduled news broadcasts. Observers have noted a trend whereby private and state-run electronic media practice self-censorship, favoring the ruling CPP and Prime Minister Hun Sen in their news coverage. Also, the privately owned media outlets have reportedly been reluctant to accept paid programming from non-CPP sources without explicit authorization to do so from the Ministry of Information.

One approach to addressing the problem of unequal media access, described in a discussion paper authored by the UNDP, would prohibit political parties from independently purchasing airtime on private media outlets. Airtime for political advertising would be provided by the NEC, paid for by international donors or would not be provided at all.

Cambodia's airwaves are comparatively closed to alternative sources of information, such as opposition and NGO-produced programming. If they were opened, and additional applicants who meet the legal qualifications were provided broadcast licenses, accusations of unfair and unequal access would likely decrease. Prohibiting domestic media outlets from re-broadcasting news from foreign sources, as the Government of Cambodia has done with Beehive Radio's use of Radio Free Asia and Voice of America programs, further diminishes the choices of information outlets available to Cambodia's citizens.

C. Election Implementation

Voter Registration

Reports of errors and violations in the voter registration process have been acknowledged by all three of the main political parties, as well as domestic and international monitors. This is the fourth time Cambodia has implemented a new registration process in as many elections. Complaints have been registered that the new process is both confusing and is being applied unevenly. While there has been a broad range of complaints of a technical nature, there is no clear pattern of problems, although complaints seem to be concentrated in urban areas, where opposition support is considered greater. For example, while some registration centers have been well run, others have not been open during the required hours of 7:00 am to 5:00 pm, excluding lunch. Efforts to keep voter registration stations open longer to accommodate factory workers or farmers, as required in the NEC's instruction manual, have also been uneven.

Commune officials, in some cases, have taken few actions to quickly and efficiently assist poor, homeless and migrant citizens who have limited access to the papers required for registration. Delays in providing documentation of residency have prevented some voters from being registered. Moreover, while the procedures for acquiring documentation for proving a

voter's identity, age and residence are clear, this is not the case for the process of acquiring documentation proving nationality. This process unfairly disadvantages poor and migrant citizens.

Transferring voter registration responsibilities to the commune councils and their clerks has reduced the election cost and increased the sustainability of the election process. While the newly elected commune councils are multi-partisan, observers have reported that many commune chiefs, nearly all of which are CPP, and commune clerks, who report directly to the central government rather than the NEC, are executing their duties under a cloud of partisanship. The delegation has received the same complaints at some registration centers.

Some commune clerks have sought not to register people who are qualified: one woman at a center visited by the delegation had paid no less than 11 previous visits. Other registration centers have taken a pragmatic approach, which has led to high registration, even if not fully in line with the regulations. As commune clerks fall under the jurisdiction of the Ministry of Interior for the voter registration process, if any are found in violation of the law, it is unclear if the responsibility of administering sanctions falls to the Ministry of Interior or the NEC.

Although the Cambodian constitution and election law does not prevent the nation's estimated 50,000 monks from participating in the political process, directives issued by the Patriarchs of the two Buddhist sects have instructed monks not to register to vote. Some monks have exercised their rights as Khmer citizens to vote and have appeared at registration stations carrying the proper identification. Others have been turned away by commune officials on the basis of these religious directives. National government officials are treating the monks' participation in the election process as an internal matter within the religious organizations. Election officials, however, are not permitted under law to deny registration to anyone who chooses to register and meets the registration requirements.

Voter Education

The complex documentary evidence required by voters to register enhances the need for voter education efforts prior to and during the voter registration period. Nevertheless, time constraints in the election calendar, resulting from the delayed appointment of a new NEC and subsequent approval of new voter registration regulations, has resulted in a lack of preparation for proper voter education prior to the commencement of the registration period.

Election officials acknowledge their lack of preparation due to time constraints, and have actively encouraged political parties and civic groups to assist with voter education efforts. It is therefore unfortunate that civic groups' and political parties' efforts to fill the gap in outreach have been hampered by local government officials. The Khmer Youth Association (KYA) and the Neutral and Impartial Committee for Free Elections in Cambodia (NICFEC) have both documented unfair impediments to their non-partisan attempts to educate voters and encourage them to register to vote. The NEC needs to have voter education materials ready to encourage voters to check the Preliminary List as soon as it is published.

Campaigning

While the restrictions on campaigning during the 30-day campaign period are clear, it is unclear what constitutes legal and illegal political activities outside of that time frame. For example, Prime Minister Hun Sen stated in a speech last April, as reported in the April 9, 2002 edition of the Cambodia Daily that he "promised to restore all roads built before Cambodia was engulfed in civil war if he is re-elected prime minister next year." If such a statement is

allowable, then all political parties should be able to make similar pleas for votes at any time outside of the official campaign period.

Complaints

The regulation on complaints and appeals has not yet been determined. There are three clear paths for handling alleged violations: conciliation, administrative hearings and criminal judicial proceedings. While conciliation processes have a valuable role, they should not be applicable in serious cases. It is not yet clear which path is to be followed for any particular violation, who has the power to initiate a complaint, and who will hear and decide the complaint. Clear definitions and easily understood and accessible procedures describing who will investigate cases will be very important to a credible process.

D. Civil Society

A number of Cambodian organizations, including the Khmer Youth Association, Women for Prosperity, the Center for Social Development, and Cambodia's two leading election monitoring organizations - the Committee for Free and Fair Elections (COMFREL) and NICFEC - have actively advocated for changes to the amended Law on Elections and subsequent electoral regulations. These organizations have stated that, although consultations were held on a draft election law, they were largely unable to influence the development of the amended Law on Elections due to its rushed development and adoption. These organizations, however, have had more of an impact on the development of the regulations. For these elections, the NEC's decision to set up a regular monthly meeting with civil society organizations to hear their feedback on draft regulations and process should be regarded as a positive step. In addition to advocacy, many of these organizations are undertaking their own voter education efforts around the country.

Election Monitoring Organizations

Cambodia's two leading election monitoring organizations – COMFREL and NICFEC - have actively monitored election-related activities to date and expect to play an important role in monitoring the upcoming stages of the 2003 electoral process. The delegation learned from representatives of these organizations that they were mostly satisfied with provisions in the legal framework that govern their role in monitoring every stage of the July 2003 elections. COMFREL claims to have credentialed 1,600 monitors and NICFEC claims to have credentialed 3,000 monitors to observe voter registration.

E. Election Financing and Sustainability

The role of donor finance should also be considered. In the long term, a sustainable democracy requires an enduring election machinery. The 1993 elections conducted by UNTAC were hugely expensive, approximately \$1.7 billion; the budget for the 2003 elections is about \$12.5 million, which at around \$2 per voter is well in line with international practice.

Any democratic election must meet acceptable and credible standards. Many proposals have been put forward that would lead to higher electoral standards, but which would lead to considerable extra expense. The specific electoral recommendations made in this report have therefore been aimed to bring higher standards, trust and confidence without significant increases in expenditure. Commitment to the rule of law and the implementation of the law, however, are a matter of political will. We strongly believe that, given the requisite political will, Cambodians are quite capable of conducting an election that meets international standards under its current budget.

VII. RECOMMENDATIONS

While there are serious shortcomings in Cambodia's elections process, there is still time to make improvements that can help to build confidence in the upcoming elections. Below is a list of recommendations that can be implemented in the time remaining.

Addressing Violence and Intimidation

- It is critical that those who engage in violence and intimidation be apprehended, prosecuted and convicted in a timely manner. More than anything else, this will help to build public confidence in the election process and deter future violence.
- The political parties should develop a code of conduct or joint agreement that addresses violence and intimidation during the pre-election. Such agreements can be important confidence-building measures because the contesting parties freely enter into them.
- Law enforcement authorities must develop a plan for protecting candidates as well as political party and civil society activists who are engaged in the election process. Routine meetings at the provincial level among these groups and provincial officials could help to prevent future violence from occurring.

Enforcing the Laws Regarding Election-related Offenses

- Any person who misuses state resources, in violation of the law, to support or oppose any candidate or party should be prosecuted and punished.
- The Election Law should be amended to clearly state that paying a person not to register or not to vote is a violation of the law.

Enhancing Confidence in the NEC and Improving the Regulatory Framework

- To enhance confidence in the NEC, it should anticipate problems and take proactive measures to address them in a fair and unbiased manner before they become acute.
- The NEC should take strong administrative action against any violations of the election law and regulations. This includes sanctions against any election officials who do not fully perform their duties.
- The NEC should formalize the process of meeting with representatives of political parties and election monitoring groups by establishing, within the election administration, political party liaison committees at the national and local levels. These committees should meet regularly with the above-mentioned groups to share information, anticipate future problems and address concerns.
- The NEC should clearly define how particular complaints should be handled: by conciliation, administrative hearings or by the criminal judicial process. Draft NEC regulations state that a "petty" offense should be handled by conciliation, but the NEC has not yet finalized what constitutes a "petty" violation.
- The NEC should exercise its power to inspect the campaign finance records of political parties. Political parties should be further required to file statements on their campaign

donations and expenditures with the NEC, and these records should be available for public inspection.

Maximizing Voter Registration

- The NEC should take every opportunity to instruct commune election officials and registrars on the registration process to encourage the registration of all eligible voters. This includes providing clear descriptions of all documents that may be required for registration.
- The Ministry of Interior should ensure that a clear and efficient method is in place for issuing documents proving nationality to citizens who do not possess such papers. This procedure should be widely publicized and commune officials should be trained in its implementation.
- The NEC should make use of the full time period allowed in the regulations and election calendar. The period of registration could be extended to the maximum allowed by law without affecting the remainder of election process. An extension of voter registration should be matched with a deliberate effort to register disadvantaged groups of potential voters, including the poor, homeless and migrant citizens such as students or factory workers.
- Throughout the registration process and upon its completion, the NEC should publicly evaluate the performance of registration officials in each commune, and sanctions should be transparently imposed when registration officials violate the election law or fall short in implementing the regulations.
- The NEC needs to address concerns about developing an accurate voter list and take steps to correct the previous voter registration list.

Enhancing Voter Education

- Efforts must be made to prevent government officials from interfering with civil society efforts to educate voters on the electoral process. These organizations are conducting these activities at the request of the NEC, and every effort should be made to facilitate their voter education programs.
- It is the ultimate legal responsibility of the NEC to ensure that the electorate is fully informed about the upcoming election. Proactive planning and using more effective means of reaching all voters, many of whom can not read, will be required to accomplish this task.

Ensuring Access to the Media

- Radio and television broadcasts, which represent the primary news source for most Cambodians, must be allowed to carry alternative voices. The number of broadcasting licenses should be expanded to independent sources of information to reach Cambodian citizens.
- The Ministry of Information must ensure that all media outlets operate free from politically motivated government censorship. Further efforts must be made to reverse the

trend of self-censorship among journalists. Directives should be issued to guarantee media outlets of their rights under the Law on Press Regulations.

- The NEC should ensure that candidate debates among competing parties, which are currently planned, receive broad coverage by the state-controlled media.
- The government should license local radio stations to rebroadcast the widely popular news coverage provided by Radio Free Asia and Voice of America.

NDI will continue to observe the processes surrounding Cambodia's July 2003 National Assembly elections in the spirit of international cooperation and in accordance with international standards for election observation and Cambodian law. A future NDI delegation will assess the progress made in adopting and implementing the recommendations identified above. Once again, the delegation offers its gratitude to everyone with whom it met. Had they not taken time to share their views and offer information, the delegation would not have been able to complete its work.