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## **The 2003 National Assembly Elections**

This is the first of two reports that will be issued by the Special Representative of the Secretary-General for human rights in Cambodia on the 2003 National Assembly elections. A second report will be published after the electoral process is complete.

These elections must be viewed through a historical perspective, as a test of whether Cambodia is progressing towards becoming a pluralist democracy based on the rule of law and respect for human rights.

This first report addresses several concerns in connection with the forthcoming elections, many of which the Special Representative has previously raised in his reports on the Commune Council elections in February 2002 and, more recently, to the General Assembly and the Commission on Human Rights. These include murders of political party activists and the need for lawful investigations and prosecutions of those responsible; the involvement of local authorities, police, military and other state actors in the intimidation of party activists and voters; the failure to uphold the neutrality of state institutions; and the need for equitable access to the media by political parties. The Special Representative has also raised these concerns directly in meetings with senior ministers of the Royal Government of Cambodia, the National Election Committee, leaders of political parties, and others who have a stake in Cambodia's elections.

The purpose of this report is to provide the Government, the NEC and the public with information on issues affecting the right of Cambodians to vote in genuine elections that guarantee the free expression of their will. While progress has been made in improving the environment in which the 2003 elections are being held, there remain significant obstacles to establishing a level playing field for all political parties, a transparent electoral process and a political climate that is free from violence and intimidation. The Special Representative calls on all participants in these elections to help overcome these obstacles in order to move Cambodia a step closer to becoming a genuine multi-party democracy.

## **The 2003 National Assembly elections: a pre-election report**

The forthcoming National Assembly elections – the fourth elections held since the 1991 Paris Agreements – represent an important step in the efforts of Cambodia and its people to establish a multi-party democracy, as provided for in the nation's Constitution<sup>1</sup>. Both the current Special Representative and his predecessor have reported high levels of violence and intimidation as accompanying earlier elections in Cambodia. Yet, the 2002 commune elections marked significant progress when compared to the national elections held in 1998 and 1993, with a decrease in the overall level of violence and the results being accepted without serious conflict. It is hoped that this positive trend will continue.

### **Electoral reforms and security issues**

The Special Representative noted in his report to the 57<sup>th</sup> Session of the General Assembly that the National Election Committee “appears to have played a positive role in assuring generally good technical standards during the 1998 and 2002 polls, but it needs to strengthen its position as a credible, transparent and independent institution”<sup>2</sup>. While he notes that the current NEC is a more professional institution than its predecessor, he sees the selection process for NEC members, which continues to restrict nominations to those made by the Ministry of Interior, as representing a missed opportunity to build greater confidence in the integrity of this institution.

The Special Representative welcomes the consultative process that the NEC has followed in drafting the Regulations and Procedures for the Conduct of the Election. He notes several cases where comments from political parties and civil society organisations have been reflected in the adopted Regulations. The Cambodia office of the High Commissioner for Human Rights also raised concerns about several draft Regulations, in particular articles that carried the potential for restrictions of the rights to freedom of expression, assembly and participation in public affairs. The Office provided suggestions for amendments to these Regulations, some of which the NEC subsequently adopted.

The Special Representative also welcomes initiatives that the NEC has taken in co-operation with the Ministry of Interior to improve security during this election period. These include a seminar organised by the Ministry on 4 June to train 700 high-ranking police, gendarmerie, and army personnel on election planning, and the joint NEC-MoI directive 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. This directive, however, also raises concerns in requiring that local authorities be provided with advance notification of private political meetings and the erection of party signs on private property. No justification has been provided for this unwarranted level of surveillance.

In his final report on the 2002 commune elections, the Special Representative noted the failure of the NEC to exercise its powers of sanction in any case of electoral irregularity or other breaches of the electoral law, including voter intimidation and coercion. There

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<sup>1</sup> Constitution of the Kingdom of Cambodia, 1993.

<sup>2</sup> United Nations General Assembly, *Situation of human rights in Cambodia*, Report of 27 September 2002, A/57/230.

are still no cases, relating either to the 2002 elections or the current pre-election period, where these penalties have been imposed. Reports have been received of “reconciliation meetings” held by Provincial Election Commissions in a number of cases. Such meetings are not, however, an adequate substitute for the processes provided in law, and complainants are often not satisfied with their outcomes.

### **Investigation and prosecution of election-related murders and suspicious deaths**

The Special Representative notes progress in the willingness of law enforcement officials to investigate 17 murders and suspicious deaths documented by the Cambodia office prior to the 2002 commune elections, all of persons connected to the electoral process. He is aware of convictions in 10 of these cases, but remains concerned about serious flaws in the judicial process of some of the prosecutions, and recommends that these cases be reviewed. The Special Representative also urges the police, prosecution and courts to show continued commitment to solve the remaining cases from the 2002 elections and those that have occurred since. The problem of impunity continues to adversely affect the ability of Cambodians to engage in political and public life without fear, and whatever the true motivation for these killings, their damaging impact on the general political climate should not be underestimated.

In the period since the end of the commune elections on 3 February 2002 until the beginning of the election campaign period on 26 June 2003, the Cambodia office has recorded a further 12 cases where known activists from the three major political parties have been killed. One case involved a double murder of both an activist and his daughter, bringing the total number of deaths to 13.

The Special Representative remains concerned by the continuing tendency of Cambodian law enforcement and government officials to publicly declare such cases as being non-political before investigations have been concluded. He is, however, encouraged by the more considered approach displayed by the Deputy Chief of National Police in a recent meeting with him, and hopes that it will be reflected in public statements made by the authorities in the future.

The Special Representative notes in particular the investigation into the murder of Om Radsady, a senior advisor to the FUNCINPEC Party. Within hours of the incident, the Ministry of Interior publicly stated that theft was the motive behind the attack, thereby pre-judging the outcome of its own investigation. The reluctance on the part of investigating authorities to probe political motives in this killing has damaged the credibility of the investigation and the Ministry's commitment to neutrality.

### **Restrictions on freedoms of expression and assembly**

Political party activists have a constitutionally protected right to openly and directly criticise the government and its policies, as do all Cambodian citizens. The Special Representative wishes to emphasise that there is no law that prohibits political campaigning or information sharing programmes undertaken by political parties outside the official election period. Dissemination of information by any person, political party, or organisation at any time, regardless of campaign timetables, is not only a constitutional right, but also a prerequisite for a well-informed electorate.

The Special Representative is concerned at the perception among many state actors and institutions that criticism of the Government may amount to criminal incitement, and that political party information cannot be disseminated outside the official election campaign period.

During the voter registration period in January-February 2003, ten cases of brief but illegal arrest and/or detention of opposition activists by local authorities were brought to the attention of the NEC by the Cambodia office. Investigation reports provided by the Ministry of Interior and NEC demonstrated no lawful grounds for the arrests, which took place while the activists were disseminating party information critical of the Government and conducting other legitimate political activities. To date, however, no action appears to have been taken against those responsible.

The Special Representative is also troubled by the restrictions that have been placed upon freedom of assembly in the wake of the rioting in Phnom Penh on 29 January 2003. The violence and destruction that took place during those events were deplorable. However, they do not constitute a valid justification for the subsequent refusal by authorities to authorise a range of planned demonstrations, parades, marches and meetings in both Phnom Penh and provincial Cambodia. A number of gatherings were not authorised on public order or national security grounds, the details of which were not provided by the authorities. They include 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.

In the cases where demonstrations have taken place without authorisation, the Special Representative is concerned at the excessive use of force by the authorities. Sam Rainsy Party members who marched to the National Assembly on May 21 were forcibly dispersed by riot police, with some minor injuries resulting. More serious still was the response to a demonstration at a garment factory on June 13, which resulted in the deaths of one factory worker and one police officer, and at least 20 other injuries.

The limits set on freedom of assembly and the violent dispersal of unauthorised demonstrations are of particular concern in a pre-election period. The Special Representative recognises the tensions between ensuring the rights to freedom of expression and assembly and preserving public order, but believes that the restriction of these rights constitutes a serious threat to the credibility of not only the elections, but also the wider democratic process in Cambodia. The Special Representative calls upon the Government to guarantee these constitutionally protected rights, especially the right to "non-violent demonstration", and asks that any restrictions of these rights be limited to those that are necessary in a democratic society and are proportional and narrowly tailored to meet the desired objective, in this case preserving public order.

## **Voter intimidation and coercion**

The Government recently released a statement<sup>3</sup> indicating that the security forces and authorities at all levels must act with independence and neutrality in their duties, "in order to ensure a political atmosphere of peace, security and safety" and guarantee the human rights of citizens. The Special Representative finds it regrettable that this statement is not always respected. Monitoring teams from the Cambodia office, which have visited each of Cambodia's provinces and municipalities since the start of May 2003, have reported numerous cases of harassment, threats, and intimidation by local officials directed primarily against the political opposition. This reflects the patterns observed by similar teams during the 2002 commune elections, as well as ongoing reports documented by the Cambodia office's Protection and Policy Development Team.

Reports of voter intimidation have been received from all areas of the country, with particular concentrations in the provinces of Kampong Cham, Siem Reap, Kampot, Svay Rieng, Takeo, Oddar Meanchey, Banteay Meanchey and Kampong Thom. The most common reports involve confiscation of voter registration cards or other ID documents by local officials, assembling voters to thumbprint support for one party, and allegiance-swearing ceremonies typically requiring the consumption of "oath water".

Intimidation has also taken the form of physical threats, shots fired in the air, and party signboard removal and destruction. In some cases, local officials have delivered menacing threats in public without fear of sanction. Supporters and activists of political opposition parties have been warned by local officials, including members of the police and military, that their political activities must stop, and that their continued political activism will result in physical harm to themselves and to their families. Surveillance and targeting of opposition supporters has intensified in concert with the increased campaigning and voter education efforts of the political parties, and often in co-operation between commune-level police and local civilian officials.

Other methods that have been employed include warnings of a resumption of war, loss of residency rights and confiscation of property, all reported against individuals who are identified as passively or actively supporting opposition parties. In some areas, voter coercion has focussed on economic threats to communities, with clusters of 10 to 50 families required to assemble, and being informed by village chiefs that the community will lose roads, bridges, agricultural inputs and development projects if opposition parties are successful in the elections. Infrastructure projects are identified as funded by the party rather than by the state or international donors, misleading the electorate to believe that such benefits derive from party loyalty.

Far greater efforts need to be made to investigate cases of voter intimidation and coercion and punish those who are responsible for these illegal practices – whether through the courts or the sanctions available to the NEC. At present, violations of the electoral law and infringements of constitutionally protected rights appear to be condoned as they are carried out across the country without apparent fear of sanction.

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<sup>3</sup> Statement of the Royal Government of Cambodia, No 41, signed by the Prime Minister, 23 June 2003.

The Special Representative also notes as a particular concern the central role of village chiefs in many reports of intimidation and coercion. Cambodian law requires that the Commune Councils elected in 2002 recruit village chiefs based on instructions issued by the Ministry of Interior<sup>4</sup>. To date, no such instructions have been issued, and the chiefs remain unelected and unaccountable political appointees, many of whom have held office since the fall of the Khmer Rouge. Further, there are no restrictions upon village chiefs and other village officials being accredited as political party agents, as they are not officially recognised as civil servants. Party agents are allowed to observe polling activities inside polling stations. Because every effort must be made to minimise the threat of intimidation on polling day, the Government should consider banning village chiefs from polling stations at all times other than to cast their own votes.

### **Political party access to media**

The Law on the Election of the National Assembly gives the NEC the responsibility to ensure equal access to State media for political parties during the campaign period. The Special Representative received assurances from the NEC that fair and equal access to the media would be observed during the campaign, thereby fulfilling an important criterion of democratic elections, a level playing field for political party information campaigns to reach the public. This issue is of particular concern in Cambodia, where opposition access to both state and private broadcast media is usually extremely limited. A national survey of Cambodian voters indicates that most voters are still unaware of the political choices available to them, with 91 per cent saying they would welcome radio or television broadcasts that illuminate policies, platforms and personalities of the different parties.<sup>5</sup>

The Special Representative welcomes the NEC policy to ensure free equal access programs for all parties on state-run stations - TVK, National Radio AM, and National Radio FM96 - during the campaign period. He also views as encouraging the election news programming on TVK, although he remains concerned that the time-sharing formula allotted to TVK and the two radio stations privileges the three main political parties.<sup>6</sup> He is also concerned at the refusal by privately-owned television stations to accept election programming, and urges the NEC to monitor the content of broadcasts during the campaign period to ensure that the regulations on equal access are not breached.

Equitable media access is an internationally recognised pre-requisite to fair and informed elections. The Special Representative encourages the NEC to ensure that state television and radio provide more equitable access for political parties to address the electorate. The Special Representative further urges the Government to address the wider problem of opposition access to broadcast media outside the election campaign period.

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<sup>4</sup> Law on Administration of Communes, 2001, Art. 30

<sup>5</sup> The Asia Foundation, *Democracy in Cambodia—2003: A Survey of the Cambodian Electorate*, Draft-16 May 2003: 7, 11.

<sup>6</sup> Under this formula the CPP will be allotted 44 per cent of broadcast time, Funcinpec will have 29 per cent and the Sam Rainsy Party will have 19 per cent of the air time.

## Recommendations

It is too early to judge whether the trend towards an improvement in the political climate observed between the national elections in 1998 and the 2002 commune elections will continue. The Special Representative certainly hopes that this will be the case. However, based on the findings of this report, greater efforts by the Government and NEC are needed to ensure that Cambodia's people will be able to express their political convictions and opinions freely and without fear of retribution in the upcoming elections.

### **The Special Representative recommends that:**

- The police and courts ensure that swift and thorough investigations and prosecutions are undertaken in all cases relating to the murder of political party activists and others connected to the election process.
- The National Election Committee, Provincial Election Commissions and Commune Election Commissions respond promptly to complaints of violence, intimidation, and harassment during the campaign period.
- The National Election Committee use its full powers to impose fines and other sanctions on local authorities that have used their state positions to act on behalf of political parties.
- The National Election Committee use its authority to actively investigate and sanction individuals responsible and associated with voter intimidation, coercion or any other breach of law that interferes in the electoral process.
- Law enforcement officials respond promptly to reports of election-related violence and actively investigate complaints from representatives of all political parties.
- The Government consider banning village chiefs from working as party agents, so as to ensure that they will not be permitted to enter polling stations other than to cast their own votes.
- The Government ensure that any 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 the relevant objectives, such as maintaining public order.
- The Government and law enforcement officials ensure that all demonstrations are policed in a responsible and professional manner and, only if absolutely necessary, disperse these gatherings without the use of excessive force.
- The National Election Committee ensure that state-run television and radio provide equitable access to political parties in order to address the electorate, and that private broadcast media do not breach the election regulations.