



**STATEMENT OF THE NDI PRE-ELECTION
DELEGATION TO CAMBODIA'S 2003
NATIONAL ASSEMBLY ELECTIONS**

Phnom Penh, June 5, 2003

This statement is offered by an international pre-election delegation organized by the National Democratic Institute for International Affairs (NDI). The delegation visited Cambodia from May 29 through June 5, 2003. This is the second NDI pre-election delegation in advance of July 27 elections. The first delegation's statement, dated February 4, 2003, can be found on NDI's website at "www.ndi.org". The Institute will continue to monitor the election process through the post-election period and will issue additional statements and reports when appropriate.

The purposes of this delegation were to express the international community's interest in and support for the development of a democratic election process in Cambodia and to provide an impartial and accurate report on the character of the process to date. The delegation conducted its activities according to international standards for nonpartisan international election observation, comparative electoral practice and Cambodian law. NDI does not seek to interfere in Cambodia's election process. The Institute recognizes that, ultimately, it will be the people of Cambodia who will determine the credibility of their elections.

SUMMARY OF OBSERVATIONS

This delegation is deeply troubled by critical flaws in the environment surrounding Cambodia's upcoming July 27 elections. The delegation noted a number of improvements in electoral preparations and reduced political killings compared to elections held in 1998 and 2002. Nonetheless, it is crucial that Cambodian authorities exert extraordinary efforts to create effective opportunities for voters to gain the information they need to make informed political choices, to ensure that voters are free to exercise their choice without intimidation or undue influence and to guarantee political competitors effective opportunities to reach voters with messages seeking their support. Extraordinary efforts are also needed to ensure that the will of the voters is honestly counted, tabulated, reported and respected. Such efforts will encourage participation in the election process by political contestants and voters alike.

There are just 52 days until the July 27 elections. Unless these and related issues are urgently and effectively addressed through and beyond the July 27 polls, the elections and the broader political process of which they are a part are likely to have little democratic meaning.

The delegation is compelled to draw attention to heavy-handed behavior by the ruling Cambodian People's Party (CPP) and its state authorities toward the two main political parties that are opposing it in the upcoming elections, FUNCINPEC and the

Sam Rainsy Party (SRP). This heavy-handedness was most recently demonstrated by the disturbing June 3 broadcast on state television and on at least five of the country's other six television stations. The broadcast aired CPP allegations against FUNCINPEC leader Prince Ranariddh, which they assert justified the CPP seizure of power in the July 1997 coup d'état. The Secretary of State from the Ministry of Information, a CPP leader, stated that the 30-plus minute graphic broadcasts were in retaliation for the Prince's recent statements criticizing the CPP for the bloody events of July 1997. The Prince's statements had been aired on a pro-FUNCINPEC radio station that has limited broadcast reach.

This incident follows recent denunciations by Prime Minister Hun Sen of Prince Ranariddh for taking credit for certain government accomplishments and an ominous statement on Sunday by the pro-Hun Sen "Pagoda Boys," reportedly demanding that the Prince retract his criticism of some of them or "face results" for the criticism. The recent pressures against FUNCINPEC come as the party is indicating a degree of separation from the CPP, with which it has been governing in coalition for much of the past decade.

Since Sam Rainsy's breakaway from FUNCINPEC in 1997, the SRP has stood as the sole parliamentary party in opposition to the ruling coalition and has been confronted with ongoing pressures as a result. Recent examples of this include the arrest of several SRP activists earlier this year for distributing party information and the brief detention of 10 SRP activists during the voter registration process.

Such developments chill free political expression and encourage those who would stifle political organizing by FUNCINPEC, the SRP and other parties seeking to exercise their right to stand for elected office. Such developments also add to an atmosphere of fear and anxiety that could significantly hinder the free expression of the will of the voters. The delegation therefore reemphasizes that urgent and effective action is needed to address critical flaws in the political environment.

The delegation respectfully offers a number of recommendations at the end of this statement that are focused on the remaining days before the elections.

THE ELECTORAL CONTEXT

An accurate and complete assessment of any election must take into account all aspects of the electoral process. These include: 1) the legal framework for elections; 2) all of the various pre-election processes; 3) the voting procedures; 4) the counting process; 5) the tabulation of results; 6) the investigation and resolution of complaints; and 7) the conditions surrounding the seating of those who are elected and the formation of a new government. This delegation therefore does not pre-judge the overall process. At the same time, no election can be viewed in isolation from the political context in which it takes place. The pre-election period, including electoral preparations and the political environment, must therefore be given considerable weight when evaluating whether or not elections are democratic.

NDI's first pre-election delegation in advance of the July 27 polls, like this one, found that many of the problems that affected previous elections in Cambodia remain in the present electoral context. These problems include: the climate of impunity for politically inspired intimidation and violence; the biased composition of electoral bodies; and unfair access by the political parties to the broadcast media. That delegation, like this one, noted that the dominance of the CPP (and its predecessor party) in state institutions over 24 years has made it difficult to distinguish between the ruling party and state authorities. This raises special obligations for the ruling party and governmental authorities to take effective, immediate steps in the electoral context and beyond to develop a democratic, pluralist political process as well as to create conditions for fair political competition in elections.

The February 4 statement included 21 recommendations for improving electoral and political processes, many focusing on the legal framework and reinforcing the rule of law in the electoral context. These recommendations were aimed at encouraging the National Election Committee (NEC), which operates under the purview of the Ministry of Interior, and the Government of Cambodia to address areas such as violence and intimidation, improving the regulatory framework, maximizing voter registration, enhancing voter education and ensuring fair access to the media.

The present delegation notes that the NEC and other important actors have paid attention to the February 4 recommendations and have acted on a number of them. For example: the NEC extended voter registration in some parts of the country; established regular meetings between election officials, political parties and concerned civic organizations at the national and local level; and gave its support to a participatory, party-negotiated code of conduct. However, the majority of the February 4 have not been substantially addressed.

Factors Undermining an Informed Choice and the Ability of Parties to Communicate Messages Appealing for Support. In order to freely choose representatives to govern, voters must gain sufficient accurate information about those competing for elected office. As a corollary, political competitors must be able to effectively reach voters with messages seeking their support. These requirements for democratic elections are undermined in Cambodia by a number of factors.

Television and radio are the most influential sources of political information for voters beyond personal contact with village chiefs, who are the most important source of political information for many Cambodians and who are predominantly affiliated with the ruling party. The high percentage of the population that can neither read nor write, and the relatively small circulation of publications, restricts the impact of the print media. Studies of TV and radio have documented an overwhelming imbalance of coverage of the ruling party compared with the other two parliamentary parties, FUNCINPEC and the SRP.

The Cambodian Television Association (made up of all state and private television stations) decided in May not to accept paid political advertisements for the July 27 elections, even though such ads are allowed by law. This decision unfortunately removes a critical venue for parties to broadcast their appeals for voter support. In addition the NEC informed the delegation that the association is considering not broadcasting any election-related news, further denying voters information that could be important in determining their political choices.

State-controlled television and radio are to make free access time available on an equal basis to each of the qualified political parties. This will dilute the competition among the three parliamentary parties, discounting the support for the SRP and FUNCINPEC in previous elections.

In addition, according to the NEC, news coverage on state-controlled broadcast media will cover, in order: first, news about the government (which is controlled by the CPP), second, the parliament; then third, the election campaign, coverage of which will be divided “equitably” according to a formula of parties’ past votes won and members of parliament, resulting in approximately 44 percent of the coverage for CPP, 27 percent for FUNCINPEC, 18 percent for SRP and 10 percent for the smaller parties. This formula provides an advantage to the ruling party and is unlike formulas used in a number of democracies that have attempted to introduce equity guarantees in their electoral frameworks, such as Germany. Nor does this formula in any way require that coverage of each party be presented in an informative and neutral light. These problems are compounded by the fact that only two radio stations are controlled by FUNCINPEC, while SRP sponsored requests for radio and TV broadcast licenses have been denied. Permission to rebroadcast Radio Free Asia (RFA) on FM radio have also been denied.

The other important hindrance to freedom of expression noted by the delegation is a climate of self-censorship among the media. The inappropriate use of libel and defamation law adds to this problem. The detention of the owner of Radio Beehive (a pro-opposition station) and the editor of Rasmei Angkor (a pro-CPP newspaper), for airing allegedly unsubstantiated reports relating to the anti-Thai riots, illustrate the potential chilling effect that restrictions on freedom of expression generate in Cambodia.

Factors Undermining the Free Expression of the Will of the Voters. Despite certain technical and administrative improvements made by the NEC in preparing for the upcoming elections and the decreased number of political killings at this point compared to the 1998 national elections, a feeling of fear and anxiety remains among many Cambodian political competitors and voters. This problem must also be viewed against the backdrop of: genocide; civil war; the 1997 *coup d'état*; and sustained patterns of political intimidation; as well as the recent high-profile killings of a monk, a judge, an appellate court clerk, a business woman and Om Radsady, an advisor to Prince Ranariddh. These factors must also be seen in the context of a political environment that guarantees virtual impunity for the perpetrators.

These factors also must be considered in light of widespread credible reports of voters being called upon to take culturally powerful oaths of allegiance to the ruling party, the alleged collecting of thumbprints, collection of voter cards to prevent voting and the offering of gifts in exchange for votes (vote buying). Together, these factors make it difficult for the electorate to have confidence that voters may freely express their political will in choosing who should have the authority to govern.

For example, a recent opinion survey by The Asia Foundation, conducted between February 20 and March 14, showed that 47 percent of the Cambodian electorate is unconvinced that the upcoming elections will be “free and fair.” Thirty percent reported that they heard of threats of political violence, and 26 percent thought that vote-buying is possible in their area, with one person in six admitting that they would feel obligated or at least be affected by accepting “gifts” from a political party. The practice of giving gifts in order to buy votes is widely perceived as a significant problem in Cambodia. If one in six persons (almost 17 percent) of voters in an area would be affected by accepting gifts, which are difficult to refuse in light of Cambodia’s poverty and cultural traditions, the integrity of the election results could be compromised.

These problems undermine a fundamental requirement for democratic elections and require concerted corrective measures if the upcoming elections are to be credible.

Other Factors Hindering Fair Political Competition. Among the other factors that are hindering fair political competition are restrictions on freedom of assembly. A ban was recently instituted in Phnom Penh against all demonstrations. This included the denial of permission for a coalition to demonstrate against domestic violence against women. In addition, in a widely reported February 25 speech following the anti-Thai riots, the Director General of the National Police proclaimed that any protests over the results of the upcoming national elections “will be clamped down upon.”

While every government has a legitimate interest in maintaining security and public safety, the ban on demonstrations is overly broad as applied to political gatherings and demonstrations relating to the elections. The delegation also received credible reports of attempts to prevent SRP and FUNCINPEC gatherings. The delegation noted with concern the May 27 directive of the Minister of Interior, which requires parties to inform local authorities before holding private meetings or putting party signs on private land. While notifying local authorities outside the official campaign period, and notifying election authorities during the campaign, may be proper, in the present environment this directive reinforces a sense of apprehension over the exercise of the assembly rights needed for democratic elections.

A June 3 directive issued jointly by the NEC and the Interior Ministry states that parties must apply for permission three days in advance to hold gatherings in public places during the official campaign period. Given problems encountered in exercising freedom of assembly, the delegation is concerned that arbitrary or unreasonable restrictions will be applied in a manner that hinders political gatherings.

Freedom of expression is also problematic in the election context, beyond the points discussed above. The delegation noted that recent statements by Prince Ranariddh claiming credit for certain governmental accomplishments and criticizing the CPP for the July 1997 coup have drawn threatening rebukes and heavy-handed use of broadcast media. In addition, SRP activists were arrested earlier this year for distributing party information, and 10 SRP activists were detained briefly during the voter registration process, which give credibility to reports the delegation received of threats against opposition political activists in a number of provinces. The delegation noted that while there is competition between FUNCINPEC and SRP, the vast majority of reports it received concerned pressure from the CPP.

Election Administration. The delegation noted improvements that have been made to the election system. Creating a permanent list of voters, defining a detailed seat allocation formula in the election law and setting forth a more detailed process for electoral complaints and appeals address a number of the shortcomings in previous elections.

By inviting and incorporating the recommendations of civil society organizations into the development of the regulatory framework and removing previous barriers to domestic monitoring, the NEC has demonstrated a more inclusive and transparent approach.

The NEC continues to release directives aimed at closing gaps in the election regulations. Although their intent may be positive, these directives contain additional inconsistencies. Due to poor distribution, they are unlikely to adequately notify people of their rights and responsibilities. The delegation hopes that inconsistencies will be removed and that the directives are interpreted in favor of the fullest exercise of electoral related rights.

Provincial Election Committees (PECs) are overwhelmingly composed of persons affiliated with the CPP (approximately 86 percent of their members). FUNCINPEC has secured a small number of members (approximately 14 percent), while the SRP and other parties have none. The ongoing selection of election officials at the communal and polling station level is also an area of particular concern. By virtue of the selection criteria set forth in articles 3.7, 3.8 and 3.9 of the election regulations, which emphasizes prior electoral experience, the NEC has unnecessarily narrowed the pool of candidates. These criteria ensure that individuals who officiated in previous elections will once again control the election procedures in July 2003.

As with the PECs, many of these persons who previously served as election officials are associated with the CPP, and few are drawn from the ranks of the politically neutral or from opposition parties. As a result, the lower levels of the election administration have a politically biased composition. In addition to missing a valuable opportunity to give a more balanced composition to these bodies, the NEC is perpetuating a system under which the pool of Cambodians who can accumulate election experience is kept artificially shallow.

Village chiefs, commune officials, and other local political actors, both elected and appointed, have continued to serve as local extensions of the CPP. This has led to an injection of political bias into this level of the administration, which is of special concern given the opportunities opened by the creation of a newly elected and decentralized level of government in 2002. In the run-up to the July 27 elections, these officials will play a critical role in administering the process and a central role in providing information to voters about that process. Questions around their impartiality inevitably raise concerns about the integrity of the elections.

Political Parties. Cambodia's political parties are enhancing their grassroots organization. In the case of the SRP and FUNCINPEC, this has resulted in increased organizational capacity compared to past elections. All parties are accusing each other of violating the 30-day campaign rule; this illustrates the shortcomings of artificially restricting political expression. The CPP is using state resources, including vehicles, helicopters, state personnel and government offices to promote its electoral interests. Such resources are not available to other parties.

All three major parties routinely pay citizens to participate in party rallies or other activities and distribute "gifts" in the form of money, rice or vitamins, although CPP practices this on a larger scale. Such attempts at buying loyalty contribute to the popular perception of political parties as dispensers of patronage, needlessly increase the cost of political activism and tend to discourage all but the wealthy from seeking political office. In many respects, Cambodian parties therefore fail to use available opportunities to maximize political participation. This is compounded by weaknesses in the parties' internal organizational structures.

Candidates running for the three major parties are overwhelmingly male, with all three major parties relegating most of their few female candidates to low list positions or to provinces where the party in question is not considered to be competitive. FUNCINPEC is fielding a total of 15 eligible women candidates, with 11 reserve candidates; the SRP is fielding 13, with 13 in reserve and the CPP is fielding a total of 12, with 24 in reserve. The SRP has three women in the number one position on provincial lists, while both the CPP and FUNCINPEC have only two.

Party nomination procedures also raise serious questions, in particular the practice of one party which planned a bidding system to determine candidate placement on party lists. Such practices negate possibilities for developing grassroots party leadership and promoting the leadership, including candidacies, of women. By failing to take advantage of the political strength that comes from heightened levels of political involvement, the parties are contributing to the increasing levels of popular disconnection from politics reported by NDI's March 2003 focus group report and The Asia Foundation's recent public opinion survey.

Voter Education. The NEC has been credited for the reforms it introduced to the voting system, making it easier for people to vote in the July 27 elections. Due in part to

a scarcity of resources, these reforms have not been widely communicated to local level election officials or to the general public. Unless this is corrected through aggressive and extensive voter education efforts, the lack of information could translate into the disenfranchisement of many of Cambodia's voters and lead to complaints against the election process and authorities that could otherwise have been avoided.

Voter education campaigns should receive top priority from the NEC, and the Committee should encourage any groups engaged in legitimate voter education activities to pursue their work, especially in light of the need to supplement the NEC's limited resources. The NEC has established a requirement that NGOs planning voter education efforts must notify local authorities 48 hours in advance of their program. This requirement should not be used to prevent or disrupt such activities. The delegation received reports that several NGOs are delaying voter education activities until the official 30-day election campaign period begins because they are fearful of violating the law even though there is no legal prohibition against such activities. These problems further illustrate the urgent need for the NEC to conduct education campaigns that explain the duties of election officials, local authorities as well as the rights of voters and the political parties.

The political parties must take seriously their responsibility not only to canvass supporters but also should provide accurate information to the public on the voting process.

THE DELEGATION AND ITS WORK

The delegation included: Kenneth Melley, secretary of the executive committee and chair of the Asia committee of NDI's Board of Directors; Patrick Merloe, NDI Senior Associate and Director for Programs on Election and Political Processes; Smita Notosusanto, Executive Director of the Centre for Electoral Reform (CETRO) in Indonesia; and Stephen Farnsworth, associate professor of political science at Mary Washington College and an expert on the role of the media in elections. NDI Senior Program Manager and former Cambodia Resident Representative, Eric Kessler, served as the delegation's technical advisor. The delegation was assisted by: Blair King, NDI Senior Program Manager for East and Southeast Asia; Kourtney Pompei, NDI Senior Program Assistant; and members of NDI's office in Cambodia, including Mark Wallem, Muth Chanththa, Tarikul Ghani, Dominic Cardy and Laura Paler.

From May 29 through June 5, 2003, the delegation conducted extensive meetings in Phnom Penh, and in Kampot, Kampong Speu, Kandal, and Kampong Cham. The delegation met with: a wide range of representatives of the Government of Cambodia; leaders of the ruling and opposition political parties; legislators; representatives of domestic election monitoring organizations; journalists; and representatives of the international community. The delegation would like to express its deep appreciation to all of those who took the time to share their views.

RECOMMENDATIONS

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 – including 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. The delegation has noted the commitment of many governmental, political and civic leaders to developing a democratic election process. In recognition of this, and, in the spirit of international cooperation, the delegation respectfully offers the following recommendations.

1) Paid Political Advertisements. The delegation urges the Cambodia Television Association to reverse its decision to refuse paid political advertisements during the upcoming election period. Given Cambodia's electoral context, provision of paid political advertisements on the private broadcast media, at normal commercial rates and on a non-discriminatory basis, is a crucial means to create more meaningful political competition.

2) Fair News Coverage. Public and private broadcast media should commit to accurate, fair and extensive news coverage of the election campaign. Receiving unbiased news coverage of political parties and electoral issues is central to the voters' ability to make informed political choices.

3) Media Access. The delegation urges state controlled broadcast media to provide, in good faith, political party access, as well as fair and equitable news coverage. In addition, the delegation urges the NEC to adjust the regulatory framework to provide greater media access and coverage for the major political parties, which have demonstrated a significant level of voter support in past elections.

4) Respect for the Rights of Journalists. The delegation urges the Government of Cambodia, the NEC and the political parties to allow and encourage the fullest expression of opinion through the media and not to threaten, induce, or otherwise attempt to influence the impartial operation of journalists or media outlets.

5) Respect for Voters' Rights. The Prime Minister, the Chairman of the NEC and the presidents of the main political parties should issue public pronouncements denouncing the taking of oaths, collecting of thumbprints, the collection of voter cards and other means of unduly influencing or intimidating voters. They should make clear that all such acts are illegal and that it is wrong to honor such oaths. The delegation urges the police, prosecutors and local government authorities to pursue vigorously these electoral violations, to prosecute the perpetrators and to publicize the prosecutions in order to demonstrate to citizens that these practices will not be tolerated.

6) State Authorities. Ministers, commanders of security forces and governors should ensure that the personnel and resources under their control are used only in the public

interest and not for the electoral advantage of any one political party or candidate. This should be accomplished by issuing clear directives to this effect, investigating violations of the directives and ensuring that violations of electoral rights – whether by state officials or private citizens – are prosecuted. Greater efforts should be expended to investigate and vigorously prosecute those who are responsible for political violence and killings, including past cases that have been ignored.

7) Election Monitoring. Election monitoring organizations should collect accurate data on the electoral process and impartially report it in a timely and detailed fashion. This will help ensure that responsible authorities and political competitors can take appropriate action to better ensure electoral integrity based on these reports.

8) Political Parties. Political party leaders should ensure that party activists at all levels understand and uphold the law and comply with relevant regulations and codes of conduct. They should take firm disciplinary action against violators of these requirements. Parties also should document in a systematic fashion any abuses directed towards them or the voters, use available means to seek legal redress of their grievances and refrain from spreading false or unsubstantiated allegations. In addition, parties should conduct their electoral campaigns in an organized and vigorous manner, using all legal opportunities available to communicate their messages to voters.

9) Election Administration. The NEC should implement and enforce election law, regulations and directives to ensure impartial and effective action by election and public officials at all levels. In order to enhance public confidence in the impartiality of election administration, the NEC should ensure that persons selected as election officials at the provincial, communal and polling station levels are widely accepted as being politically neutral or that electoral bodies are balanced with people who are not associated with the ruling party. The NEC with should devote more resources to complaint investigations, and all governmental authorities should cooperate with the NEC to provide effective remedies.

10) Voting and Counting Procedures. The NEC should take measures to guarantee the effective opportunity of qualified persons to exercise their right to vote by implementing procedures concerning acceptable proof of identity. This should include instructions clarifying treatment of misspellings, missing photos and other technical matters concerning the voter lists. In order to increase public confidence in the election results, the NEC should ensure that all election officials respect the right of political party agents and election monitors to observe election day procedures, the counting of ballots and the tabulation of results. Copies of official tally sheets that include a full accounting of ballots and detailed election results should be provided to political party agents.

11) Women's Participation. The NEC, political parties and election monitoring organizations should actively recruit, train and assign women as election officials, political party agents and election monitors. Opportunities to participate and to develop leadership in these areas of the election process are important for enhancing women's political participation.

12) Voter Education. The NEC, political parties and election monitoring organizations should implement comprehensive voter education campaigns focusing among other areas on the importance of ballot secrecy, resisting vote buying and intimidation, as well as focusing on codes of conduct for political parties, security personnel, the police and village chiefs. The NEC should ensure that all officials involved in the election process facilitate the conduct of voter education activities and do not use regulations aimed at ensuring public order to prevent the dissemination of critical information to voters.

CONCLUSION

While the recommendations offered by the delegation focus on specific steps that can be taken to improve the electoral process in the few days remaining before the July 27 polls, the delegation emphasizes the critical nature of flaws that are evident in Cambodia's political environment. Cambodia's governmental, political and civic leaders must make concerted efforts to address these problems through the election period and beyond. Otherwise, the results of the elections may be questioned and Cambodia's potential for democratic development jeopardized. Elections are inseparable from the country's broader political process, which includes respect for human rights and the rule of law as much as it requires development of genuine political pluralism.

Cambodia is at a crossroads. Its leaders have to decide whether they will muster the political will necessary to build an open society and a democratic process. The degree of credibility assigned to the July 27 elections by the Cambodian people will be a crucial indicator of which path is taken. NDI will continue to monitor the process and will continue to offer its assistance to those who are working to advance democracy in Cambodia.