



The Committee for Free and  
Fair Elections in Cambodia

# Democracy, Elections, and Reform in Cambodia

# 2012 Annual Report



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## Acronyms

ADB	Asian Development Bank
ADHOC	Cambodian Association for Development and Human Rights
ACU	Anti-Corruption Unit
BTI	Bertelsmann Foundation Transformation Index
CCHR	Cambodian Center for Human Rights
CCIM	Cambodian Center for Independent Media
CNP	Cambodian Nationality's Party
CNRP	Cambodia National Rescue Party
CPP	Cambodian People's Party
CTN	Cambodian Television Network
DMP	Democratic Movement Party
EP	European Parliament
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia
GMAC	Garment Manufacturing Association of Cambodia
HRP	Human Rights Party
HR	Human Rights
HRW	Human Rights Watch
ICCPR	International Covenant on Civic and Political Rights
IPU	Inter-Parliamentary Union
KAPP	Khmer Anti-Poverty Party
LDP	League for Democracy Party
LEMNA	Law on Elections of Members of the National Assembly
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
MoI	Ministry of Interior
MPs	Members of Parliament
NA	National Assembly
NDI	National Democratic Institute
NEC	National Election Committee
NGO	Non-Governmental Organization
NRP	Norodom Ranariddh Party
NP	Nationalist Party (former NRP)
PFI	Press Freedom Index (Reporters without Borders)
PRC	People's Republic of China
RCAF	Royal Cambodian Armed Forces
RDP	Republican Democratic Party
RGC	Royal Government of Cambodia
RFA	Radio Free Asia
SEAPA	Southeast Asian Press Alliance
SNDC	Supreme National Defense Council
SRP	Sam Rainsy Party
TVK	State Television Kampuchea
UNDP	United Nations Development Program
UNHCHR	United Nations High Commission for Human Rights
VOA	Radio Voice of America
VOD	Radio Voice of Democracy

## I. Introduction

Cambodia is undergoing political transition since two decades from a formerly socialist government system to a liberal democratic government system (1993-2013). In the past years however concerns in parts of the Cambodian public and the international community have increased about the current state of democracy in Cambodia. A regression towards an authoritarian political system is perceived, whereas the democratization process seems to have stalled. In reaction to these concerns the Committee for Free and Fair Elections (COMFREL) has since 2009 extended its observations and analysis from the electoral process to the overall democratization process. The annual report on the state of democracy in Cambodia has the purpose to generate empirical data on the democratization process and to provide comprehensive analysis and advocacy for national and international stakeholders dedicated to Cambodia's democratization process and to strengthen democracy awareness among Cambodians. The following and previous reports titled 'Democracy, Election and Reform' are annually published and disseminated to all interested stakeholders. COMFREL supports the Government of Cambodia in its obligation to consolidate a liberal democracy as promulgated in Cambodia's constitution which also refers to the International Covenant on Civic and Political Rights.

The following report assesses the state of democracy in Cambodia in 2012 and provides answers to the question if the political system of Cambodia progress toward a qualitative improved democracy in procedural and substantive terms or if stagnation or even regression of the state of democracy in Cambodia can be observed. In order to provide answers to this question, COMFREL has developed a qualitative roster of democracy indicators, which have been operationally defined in the previous annual report titled 'Democracy, Election and Reform in 2011' including the democracy indicators: 'Democratic Governance', 'Democratic Participation', 'Democratic Competition' and 'Democratic Elections'.<sup>1</sup> In this report these indicators are extended by defining the quality of democracy in procedural and substantive terms. Procedural democracy refers to the quality of procedures applied in the policy-making process including the decision-making procedures applied within the government branches. Substantive democracy refers to the degree of involvement of the Cambodian public in the policy-making process and their ability to hold the government accountable and responsive.

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<sup>1</sup> Compare previous COMFREL Report: Democracy, Elections and Reform, Phnom Penh February 2012, [www.comfrel.org](http://www.comfrel.org)

To assess the procedural and substantive quality of Cambodia's democracy the report is structured as follows: first an executive summary of main findings in 2012 will be provided. It follows an analysis of the procedural quality of the current state of democracy, which in this report refers to the chapter 'Governance and Separation of Powers'. Then follows an analysis of the substantive quality of the democratization process which refers in this report to chapter 'Political Participation, Pluralism and Competition', followed by an analysis of past elections and prospects for the National Assembly election 2013. The report concludes with recommendations to improve the democratization process.

The assessment of the annual state of democracy is based on findings of the COMFREL Monitoring Units: 'Government Watch', 'Parliamentary Watch', 'Media Watch', 'Election Watch', 'Gender Watch' and the 'NGO Access to Information Working Group'. COMFREL's monitoring groups adapt a mix of qualitative and quantitative research methods including sample surveys and statistical analysis of voter and media data and qualitative interviews, field observations, focus groups and literature review of secondary research data. Latter includes research results, studies and reports of different national and international stakeholders and reports of reputed national and international media. All collected data are referred to in footnotes and in the bibliography including COMFREL's data to ensure reliability and verifiability of analysis and assessment of the current state of Cambodia's democracy.

## II. Executive Summary: A Fragile State of Democracy

COMFREL concludes that the Cambodian democracy has experienced further backlashes in 2012 confirming the perception among parts of the Cambodian public and the international community that Cambodia's political system is in an increasingly fragile state of democracy. Few if any changes in 2012 indicate an improvement of the procedural and substantive quality of Cambodia's democracy. Compared with the assessment of previous report 'Democracy, Election and Reform Report in 2011', the democratization process has even deteriorated to some extent. The democracy indicators 'Democratic Governance', 'Democratic Participation', 'Democratic Competition' and 'Democratic Elections' continued to remain constrained. 'Democratic Participation', 'Democratic Competition' and 'Democratic Elections' have seen no improvements. 'Democratic Governance' has seen only minor improvements in regard to responsiveness and accountability, but through manipulation of the close party list system the executive continued to dominate the legislative and judiciary. Likewise the public administration, in particular the court officials, the armed force and police, continued to be dominated by the CPP along party affiliations lacking impartiality and independency.

In addition the political process in 2012 showed trends towards authoritarianism ahead of the National Assembly election 2013 excluding oppositional and dissenting voices from the political process. Political developments in 2012 and previous years do not convincingly indicate that the Royal Government of Cambodia-(RGC) is emphasizing the consolidation of a liberal democracy as outlined in the constitution, Article 1: 'Cambodia is a Kingdom with a King who shall rule according to the constitution and the principles of liberal democracy and pluralism' and recommendations from international community and UN agents.

Likewise, the political pattern to limit political participation, freedom of expression, freedom of assembly, and access to media was observed in 2011 and continued in 2012. This includes a lack of an open and constructive political discourse on issues of public concern, a continuing weakening of the multi-party system and continuing limitations on political participation for the Cambodian public. Restrictive legal interpretations and enforcements of laws continued to jeopardize civic and political freedoms leading a number of national and international stakeholders to perceive current legal practices to be biased against the opposition and dissenting voices. Controversially, to this day there has been no solution to politically related conviction of opposition leader and Member of Parliament Sam Rainsy,

and 71-year-old journalist and human rights defender Mam Sanando, sentenced to 20 years in prison, among other cases examined in this report. The media including television and radio is still overwhelmingly dominated by the ruling party or its allies in the business community. The opposition parties or independent organizations cannot access TV coverage, except sometimes possibly in a single TV show-in state TV channel TVK. All 11 TV stations/cables and more than 100 radio stations are either owned by the government itself, by a hybrid of government and privately owned, by members of the ruling CPP, or by tycoon allies or family members of the government and CPP. The weakness of election system and limitations of free and fair elections that impacted the senate and commune council elections results in 2012 reconfirmed the dominant role of the CPP. A de facto one-party dominant system with stronger authoritarian tendencies has been consolidated and is further weakening the multi-party system implying the consolidation of a one-party system and undermining the independent role and performance of elected officials.

Only 41 of the total 1,633 commune chief seats were won by other political parties than the CPP. This includes the Sam Rainsy Party (SRP) who gained 22 commune chief seats, the Human Rights Party (HRP), who won eighteen commune chief posts and the FUNCINPEC, who won one commune chief post. None of the other contesting parties won a commune chief post, despite that ten political parties contested the election. Authoritarian tendencies were amplified in the extensive lack of a level-playing field for political competition between political parties during elections and in election free periods. Likewise the misuse of state resources and inequitable media access, in particular the majority broadcasting media which is in favor of, and controlled by the CPP, continued in 2012 despite numerous appeals by domestic and international stakeholders for a more inclusive and competitive political process. Although laws prohibit political parties to shall organize its structure with public administration, especially armed forces, police and court officials, this widely remained a systematic arrangement for CPP in 2012. In addition public administration positions are still mainly obtained through CPP party affiliation and not through merit.

Accordingly international assessments of the state of democracy in Cambodia were predominantly critical to negative in 2012 and have questioned the conduct of free and fair elections, the state of human rights protection and the procedural quality of the democracy. Freedom House continues to list



Cambodia as a ‘not free’ state.<sup>2</sup> The Democracy Index of ‘The Economist’ lists Cambodia since 2011 as a ‘hybrid regime’ ranked on place 101 out of 167 states. Hybrid regimes are defined as states in which ‘elections have substantial irregularities that often prevent them from being both free and fair. Government pressure on opposition parties, their politicians and sanction against the opposition activists and supporters are common. Serious weaknesses are more prevalent than in flawed democracies - in political culture, functioning of government and political participation. Corruption tends to be widespread and the rule of law is weak. Civil society is weak. Typically there is harassment of and pressure on journalists and the judiciary is not independent.’<sup>3</sup> The German Bertelsmann Foundation Transformation Index (BIT) concludes in the year 2012 for Cambodia: ‘The hopes once raised by Cambodia’s process of democratic transformation have long since been disappointed. The multiparty system has slowly evolved into a de facto one-party state. Political stability and a notable containment of violence have finally been achieved, but the democratic transformation process has stalled.’<sup>4</sup> The UN Special Rapporteur for Human Rights in Cambodia, Mr. Surya Subedi came to the following conclusion in June 2012: ‘What is needed is the political will to accelerate the process of democratization. The institutions that are needed to implement the democratisation process are already in place, but the process of building these institutions as effective, independent and impartial state institutions has been frustratingly slow.’<sup>5</sup>

Along with the recommendations of the UN Special Rapporteur in 2012 were different resolutions from the Philippine Senate, the Australian Senate, the European Parliament (EP), the Inter-Parliamentary Union (IPU) and comments of US-President Barack Obama who were demanding reforms to overcome the fragile state of democracy. The Australian Senate called ‘ (...) on the Cambodian Government to hold free and fair elections in 2013 and to ensure that opposition parties are able to participate fully in Cambodian politics without physical or judicial harassment or intimidation, including opposition leader Sam Rainsy., .’<sup>6</sup> The EP ‘ (...) condemns all politically motivated sentences and convictions against political critics, parliamentary opposition politicians, notably Sam Rainsy, human rights defenders and land activists, and deplores the deaths of Chut Wutty and Heng Chantha, both killed while exercising their right to peaceful protest; (...) calls for an immediate and unconditional release of Mom Sonando

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<sup>2</sup> Freedom House: Country Ratings and Status, Freedom Index Worldwide 1973-2012, [www.freedomhouse.org](http://www.freedomhouse.org)

<sup>3</sup> Economic Intelligence Unit: Democracy Index 2011 (Ed. The Economist), [www.eiu.com](http://www.eiu.com)

<sup>4</sup> Bertelsmann Foundation: Transformation Index 2012, [www.bti-project.org/country-reports/aso/khm/](http://www.bti-project.org/country-reports/aso/khm/)

<sup>5</sup> UN News Centre: UN Rights Experts Highlights Challenges to Democracy in Cambodia, 06.06.2011, [www.un.org](http://www.un.org)

<sup>6</sup> Australian Senate: Resolution on Democratic Elections in Cambodia, 10.10.2012



and other government critics and land rights activists who are being held for political reasons only; (...)urges the Cambodian Government, the National Election Committee and the provincial election committee to implement the recent UN recommendations on reforming the electoral system to ensure it conforms with international standards before, during and after the casting of votes; (...) encourages the Cambodian Government to strengthen democracy, the rule of law, respect for human rights and fundamental freedoms – in particular media freedom and freedom of expression and assembly - as these values constitute an essential element of the EU Cambodia Cooperation Agreement, as defined in Article 1 of that Agreement.<sup>7</sup> During the first visit to Cambodia by a serving American president in November 2012, US-President Barack Obama devoted his entire meeting with the prime minister to human rights issues in particular the need to move toward elections that are fair and free, the need for an independent election commission associated with those elections, the need to allow for the release of political prisoners and for opposition parties to be able to operate<sup>8</sup>.

The IPU says in its resolution from October 2012 after assessing the conviction of SRP party leader Sam Rainsy, referring also to the Chairman of the First Commission of the National Assembly, currently hold by the CPP: *'Thanks* the Chairman of the First Commission of the National Assembly for his communication; *Considers*, however, that it provides no new information to dispel its long-standing concerns that Mr. Sam Rainsy's removal of temporary border markers was a political gesture and that, consequently, the courts should never have been seized of the matter in the first place; *Regrets*, therefore, that, with national parliamentary elections drawing near, it is still not possible for Mr. Sam Rainsy to return to Cambodia to make, as the country's principal opposition leader, a meaningful contribution to free and fair elections in 2013; *Fully endorses* the Special Rapporteur's call on the ruling and opposition parties to work together with a view to resolving the situation so that Mr. Sam Rainsy can soon resume his place as a member of the National Assembly and stand as a candidate in the upcoming elections; *wishes to ascertain* what steps are being taken by either side for this purpose; *Requests* the Secretary General to inform the competent authorities and the sources of this resolution'<sup>9</sup>.

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<sup>7</sup> European Parliament: European Resolution on the Situation in Cambodia 2844, 24.10.2012

<sup>8</sup> U.S. deputy national security adviser Ben Rhodes said , Voice of America (VOA): Obama Presses Cambodia PM on Human Rights, 19.11.2012; Cambodia Daily: Hun Sen Says No Political Prisoners, 26.11.2012

<sup>9</sup> IPU: Cambodia. Case No. CMBD/01 - Sam Rainsy - Cambodia, Adopted by Consensus by the IPU Governing Council at its 191<sup>st</sup> Session, Quebec 24.10.2012, p.22 (the Cambodian Delegation Addressed Reservations Regarding the Resolution)

Despite these backlashes, the Royal Government of Cambodia (RGC) led by the Cambodian People's Party (CPP) under Prime Minister Hun Sen resisted national and international recommendations to enable *the leader of the opposition to play a full role in Cambodian politics*, to release prisoners of conscience, general election reforms, in particular the restructure of the national election committee. This resistance was in 2012 also demonstrated with more political self-confidence since the RGC has deepened its political and economic cooperation with the Government of the People's Republic of China (PRC) led by the Communist Party of China (CPC) in past years. The good relations with the PRC became visible during Cambodia's ASEAN presidency in 2012, when China's position on the South Chinese Sea conflict was accommodated by the RGC leading to diplomatic discord with the Philippines, Vietnam and the USA, and was demonstrated by the CPP led RGC with inter-party exchanges between the CPP and CPC in past years.<sup>10</sup> This trend raises concerns that the CPP led RGC could move closer towards an authoritarian political system.

### III. The Democratization Process in 2012

In the following analysis procedural and substantive criteria to assess the quality of democracy in Cambodia have been developed extending the quality measures used in the previous annual report. Procedural criteria of the state of democracy refer to the question how effective current procedures of the political process ensure governance in order to increase legitimacy, responsiveness, accountability and transparency of current and future public policies of the Royal Government of Cambodia. This part includes also an examination of the questions how effective political powers are separated between the main government branches in Cambodia and how effective current political recruitment procedures are in order to ensure a democratic representation through the conduct of free and fair elections. These questions will be examined in two separate chapters named in this report 'Governance and Separation of Powers' and 'Elections in 2012 and Prospects for Upcoming Election'.

Substantive criteria of the state of democracy refer in this report to the question how effective the Cambodian public is involved in the current policy-making process and in the political discourse over issues of public concern. The substantive quality of democracy is defined by the quality of political

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<sup>10</sup> New York Times: China Stalls Move to Quell Asia Disputes over Territory, 19.11.2012; Xinhua News Agency: Ruling Parties of China and Cambodia Expect Closer Cooperation, 20.08.2011 and Senior CPC Leaders Meet Cambodian Prime Minister, 15.06.2012; Heng, Pheakdey: Cambodia-China Relations: A Positive-Sum Game?, in; Journal of Current Southeast Asian Affairs, Vol. 31, No. 2, 2012, pp. 57-85

participation ensuring the best possible involvement of the Cambodian public in the policy-making process and the political discourse through means of political participation defined by the democratic values of ‘freedom’, ‘equality’ and ‘justice’. This includes also the question if a general democratic consciousness based on those values is emerging in the Cambodian public. The substantive quality of Cambodia’s democracy will be assessed in the chapter ‘Participation, Pluralism and Competition’.

## 1. Governance and Separation of Powers

Governance in a democratic parliamentary system is guided by the principle of separation and limitations of powers. The Royal Government of Cambodia (RGC) is legally obliged to implement governance procedures which comply to the principle of separation of powers as stipulated in the Cambodian constitution of 1993 in the Articles 51, 128 and 130: ‘Power shall be separated between the legislative power, the executive power and the judicial power’ (Article 51). ‘The judicial power is an independent power’ (Article 128). ‘No organ of the legislative power or of the executive power can exercise any judicial power’ (Article 130). The constitution also set limits for power: ‘the judicial power is guarantor of impartiality and the protector of the citizens’ rights and liberties’ (Article 128).

The executive continued to control the policy-making process in 2012, dominated the legislative and judicial branches and continued to lack transparency, responsiveness and accountability, although some progress has been made in regard to the latter. The legislative and judiciary powers continued to be constrained by a lack of independence and effective means to check and balance the powers of the executive. The legislative continued to be weakened by restrictive procedural rules in the National Assembly and lack of finances. Overdue reforms of the judiciary have not been implemented despite RGC announcements to the contrary.

### 1.1 The Legislative in the Policy-Making Process

During the course of 2012 no major reforms of the National Assembly were made to improve its capabilities. The tensions between opposition and government members of parliament (MPs) continued to paralyze the National Assembly (NA). The weaknesses of the current NA which was also observed in 2011 remain persistent, particularly due to the dominance of the Cambodian People’s Party (CPP) and the dependency of MPs from this party and its leaders. A lack of deliberation, scrutiny and representation of other political parties than the CPP continued to raise doubts about the quality of the

current policy-making process. Ahead of the National Assembly election in July 2013 the CPP also continued to occupy a dominant position in the nine parliamentary working commissions and the NA permanent committee. Since 2008 the opposition parties, the Sam Rainsy Party (SRP) and the Human Rights Party (HRP) are excluded from the work in these commissions and committees.

In previous legislatures it was general political consensus that all political parties represented in the NA obtain at least one chairmanship in one of the nine parliamentary working commissions or a member of the permanent committee. However, since the fourth legislature the governmental CPP has filled all chairman and deputy positions (2008-2013). The SRP and the HRP have in reaction boycotted the parliamentary working commissions. Only the Norodom Ranariddh Party (NRP), now called the 'Nationalist Party' (NP)<sup>11</sup> and the FUNCINPEC have agreed to occupy one single member seat each in two of the nine parliamentary working commissions. The NP is currently represented with one MP in the 'Commission on Interior, National Defense, Investigation, Anti-Corruption, and Civil Service Administration' and the FUNCINPEC with one MP in the 'Commission on Public works, Transport, Post, Telecommunication, Industry, Mines, Energy, Commerce, Land management, Urban planning, and Construction'.<sup>12</sup> Likewise, the NA permanent committee responsible to prepare the agenda for plenary sessions are all CPP members including the President, two Vice-Presidents and the Parliamentary Secretary of the National Assembly.<sup>13</sup>

The dominance of the CPP in the legislative has also been enforced by threatening or lifting the parliamentary immunity of opposition members of parliament (MPs). This includes the lifting of parliamentary immunity of SRP party leader and MP Sam Rainsy and SRP MP Chan Cheng. Only the immunity of SRP MP Mu Sochua was restored in September 2012, three years after she has lost her immunity after being convicted for defaming the Prime Minister in 2009.<sup>14</sup> Sam Rainsy had been convicted for public forgery and disinformation, racial incitement and vandalism in 2009. The Supreme Court has upheld his conviction in 2011. Sam Rainsy will not be able to participate in the upcoming NA

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<sup>11</sup> NRP have changed its party name after Prince Norodom Ranariddh, as son of King Father Norodom Sihanouk was expelled from the party in August 2012 following internal conflicts. The NRP is now called the 'Nationalist Party' (NP) and will merge with the FUNCINPEC for the upcoming National Assembly election 2013, see Xinhua News Agency: Cambodia's Norodom Ranariddh Party Changes Name, Sets to Merge with FUNCINPEC, 24.08.2012

<sup>12</sup> COMFREL Parliamentary Watch 2012 (Final Results)

<sup>13</sup> COMFREL Parliamentary Watch 2012 (Final Results); see also UN: Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, A/HRC/18/46, 02.08.2011

<sup>14</sup> COMFREL Parliamentary Watch 2012 (Final Results) and 'Democracy, Election and Reform 2011', pp. 2-4

elections except he is pardoned by King Norodom Sihamoni. The Head of State however has not signalled such attempts. SRP MP Chan Cheng lost his immunity in January 2012 after he has been alleged by courts to have helped a convicted individual to escape detention. The prosecution of Sam Rainsy is widely perceived to be political motivated in order to weaken the opposition. This perception was strengthened by Prime Minister Hun Sen when he declared in January 2011 on national radio that he wants ‘not just to weaken the opposition, but to make it die’<sup>15</sup>.

The de facto exclusion of the opposition from the legislative was in 2012 also reflected in a sharp decline in deliberation in the National Assembly. Already in November 2011 three SRP MPs had resigned from the NA protesting their exclusion. The three NA seats remained vacant until June 2012 leaving the National Assembly with only 119 instead of 123 members for six months, despite that the constitution according to Article 76 requires the occupation of at least 120 NA seats. Whereas already in 2011 only 21 hours of deliberation in the plenary sessions of the NA were counted by COMFREL Parliamentary Watch, deliberation time declined in 2012 to only 13 hours between January and December 2012. Only eight draft laws in eight sessions were deliberated. Only 21 MPs held a public speech in the plenary session of which 13 MPs were from CPP, six from SRP and two from HRP (in 2011 27 MPs held speeches). The NP and FUNCINPEC members of parliament held no speeches during plenary sessions in 2012. Total 68 times MPs demanded speech time in the plenary sessions, of which most speech time was delivered to CPP and SRP members. CPP members held plenary speeches of six hours and 29 minutes, whereas SRP MPs covered five hours and 39 minutes. Positively was only observed that the HRP held for the first time plenary speeches in 2012, though only 44 minutes. This became possible because the party had formed an alliance with the SRP in August 2012 and now the internal regulations of the NA, which requires MPs to form a group of at least ten MPs in order to speak in plenary sessions. This questionable procedure disadvantages smaller parties when they not want to form alliances. This procedural regulation however was not changed in 2012 despite appeals to change it. In 2011 the HRP could not hold any speech for this reason.<sup>16</sup>

Debates in the NA plenary sessions in 2012 concerned the state budget bill for 2013 and nine laws which were adapted including a ‘Law on Approvement of Government’s Payment Guarantee of Cambodia to

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<sup>15</sup> Agency France Press (AFP): ‘Cambodia tears up freedom to muffle dissent’, 29.01.2011

<sup>16</sup> COMFREL Parliamentary Watch 2012 (Final Results); see also COMFREL: Annual Report on Democracy, Election and Reform in 2011, pp. 2-5

Cambodian International Investment Group Co. Ltd.’, a ‘Law on Acid Control’, a ‘Law on Prison’, a ‘Law on Financial Management for Fiscal Year 2012’, a ‘Law on Drug Control’, a ‘Law on Approval on Convention on International Trade on Endangered Species’, a ‘Law on the Supervision of Agricultural Fertilization and Pesticides’, a ‘Law on Public Procurement’ and a ‘Law on the Allocation of Seats for the Fifth Legislature’. Latter led to no changes of the current number of 123 NA seats, despite that the increase in number of eligible voters would demand more seats in order to strengthen the representative function of the NA. Between the years 2003 and 2013 the number of eligible voters increased by almost three million voters from 6,341,834 to 9,203,493 eligible voters.<sup>17</sup>

The decline in deliberation in 2012 was also illustrated by a decline in written requests of MPs put forward to the executive. Current provisions allow MPs to send written requests to the executive. Only seven MPs had sent in total 17 written requests to the executive in 2012. This is a drastic and continues decline compared to the year 2011 when 36 letters were sent and to 2010 when 87 letters were sent. In 2012, only one request of a SRP MP was answered by the executive of the total twelve written requests made by the SRP, four requests made by the HRP and one request made by the CPP. Likewise has the number of questioning session of executive representatives in the NA plenary sessions not increased. In 2012 only one questioning session was held like in 2011, despite that MPs made more requests and legal provisions oblige executive members to appear in the NA. Only once Prime Minister Hun Sen agreed to appear in the NA in 2012 after the SRP raised allegations that land was lost to Vietnam. Hun Sen held a five hour speech, but MPs were prohibited to raise questions.<sup>18</sup>

In addition the number of MP field visits with 2,141 visits decreased in comparison to 2011 when 2,318 field visits were made. Of the total 2,141 field visits of 103 MPs, 27 field visits of all political parties had the purpose to intervene on behalf of citizens to resolve problems and to attend public forums. 2,114 field visits had the purpose to attend inaugurations, gift-giving ceremonies, delegating high-ranking government officials and to strengthen the party network. The field visits purposes for inaugurations, gift-giving ceremonies, delegating high ranking government officials and strengthen the party network however do only to some extent indicate a citizen-centered approach of MPs<sup>19</sup> in order to advance

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<sup>17</sup> COMFREL Parliamentary Watch 2012 (Final Results); see also Cambodian National Assembly, Press Release 13.01.2012

<sup>18</sup> COMFREL Parliamentary Watch 2012 (Final Results); RFA: PM Defends Border Pact, 09.08.2012, [www.rfa.org](http://www.rfa.org)

<sup>19</sup> Anwar, Shah; Matthew, Andrews: Citizen-Centered Governance: A New Approach to Public Sector Reform, in: Bringing Civility in Governance, Vol. 3 of Handbook on Public Sector Performance Reviews, World Bank 2003. pp. 6.1-6.36

democracy awareness among the Cambodian public. A survey conducted by COMFREL in 2012 of 8,656 interviewed voters selected on the base of a stratified sample of 850 polling stations with a margin error of five percent<sup>20</sup> revealed that only about 21 percent of eligible voters knew, who their MPs are and of those only six percent ever contacted MPs to intervene on their behalf.<sup>21</sup>

The CPP was clearly overrepresented during these field visits demonstrating its dominance not only in the NA, but in the Cambodian public. This can be illustrated by a general decline of field visits from opposition MPs. SRP MP field visits declined from 556 field visits in 2011 to 360 in 2012. HRP MPs field visits declined from 483 to 342 field visits in 2012. The CPP conducted in 2012 totally 1,366 field visits with 76 MPs. From the other parties with two MPs each represented in the NA, the FUNCINPEC made 49 field visits and the NP 24 field visits. Though the overrepresentation of the CPP in MP field visits in 2012 is to some extent explained by its larger number of MPs than other parties, the decline in opposition MP field visits also indicates that the current tensions between SRP and CPP accompanied by the criminal prosecution of party leader Sam Rainsy by the Supreme Court and the lifting of the parliamentary immunity of a number of SRP MPs in 2011 and 2012 explain this overrepresentation. Particularly SRP MPs field visits seem to have been more constrained because of these tensions and seem to have limited the space for political participation of the Cambodian public sympathetic towards the SRP. This trend is further underlined by the fact that the HRP who is not in open conflict with the CPP made in total 342 field visits, despite having only three MPs, whereas the SRP conducted with 26 MPs only 360 field visits in 2012.<sup>22</sup>

## 1.2 The Judiciary and Rule of Law

COMFREL found that the persistent lack of independency of the judiciary continued in 2012. No major judicial reforms were made. Despite that the RGC has announced a new ‘Action Plan for Legal and Judicial Reform 2009 to 2013’<sup>23</sup>. The judicial reform process has been however advancing at a very slow pace. Key fundamental laws improving the position of the judiciary are pending for two decades.<sup>24</sup> These

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<sup>20</sup> COMFREL Survey Report ‘Participation and Democratic Governance’, January 2013, p. 18

<sup>21</sup> COMFREL Survey Report ‘Participation and Democratic Governance’, January 2013, p. 5

<sup>22</sup> COMFREL Parliamentary Watch 2012 (Final Results)

<sup>23</sup> Government of Cambodia: Action Plan for Legal and Judicial Reform 2009-2013, Phnom Penh 2009

<sup>24</sup> Phnom Penh Post: Departing Subedi Surprised by Government Snub, Phnom Penh 15.12.2012, Cambodia Daily: UN Envoy Calls for Judicial Reform, Phnom Penh 12.12.2012



laws includes ‘The Law on Court Organization and Prosecution’, ‘The Statute on Judges and Prosecutors’ and ‘The Law on the Amendment of the Organization and Functioning of the Supreme Council of the Magistracy’. These laws are considered to be substantial to ensure an independent judiciary and an effective judicial review to balance and check the powers of the executive and the legislative. However these laws remain to this day in preparatory stage on executive level and have not yet reached the legislative. The slow pace of legal and judicial reforms raises doubts among a number of national and international stakeholders if the RGC has really the political will to implement these overdue laws. Most controversial remain to this day that judges and prosecutors under current laws are not obliged to resign from political party positions or refrain from political party activities once they are appointed for judicial positions.<sup>25</sup> The UN Special Rapporteur for Human Rights concluded in November 2012 to the judiciary: ‘Although the Constitution of Cambodia provides for separation of powers between the three main organs of the State, in practice the distinction between these organs is blurred and the executive branch dominates the judiciary whether by providing resources to the judiciary or in making appointments to various judicial positions or by other means.’<sup>26</sup>

The perceived lack of independency of the judiciary and due process of law observed already in past years has been re-confirmed in 2012 demonstrated by a number of highly contentious legal cases. These cases included detentions, lawsuits and prosecutions of a number of human rights activists, land activists, protesting citizens, journalists and opposition members on different criminal charges including secession, defamation, incitement and destruction of private property. Domestic and international human rights organizations including the Cambodian Association for Development and Human Rights (ADHOC), the Cambodian Centre for Human Rights (CCHR), the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Human Rights Watch (HRW) and the United Nations High Commission for Human Rights (UNHCHR) investigating those cases, released a number of concerning reports observing a general decline in human rights protection. Contentious cases referring to infringements of civic and political rights will be examined later in this report.<sup>27</sup>

Parts of the international community and the UN shared these concerns and appealed to reinvestigate contentious cases, to drop charges and to release individuals alleged charged or detained for political

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<sup>25</sup>UN Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, A/HRC/15/46, 16.09.2010, p. 16

<sup>26</sup> UN Report of the Special Rapporteur for Human Rights in Cambodia, A/HRC/21/63/Add.1/Rev. 1, 11.10.2012, p. 61

<sup>27</sup> See for example LICADHO report: Attacks and Threats Against Human Rights Defenders in Cambodia 2010-12, Phnom Penh Dec. 2012; other reports can be accessed on the Cambodian Human Rights Portal, [www.sithi.org](http://www.sithi.org)

reasons. Allegations were reoccurring in 2012 that Cambodia has political prisoners, which was vehemently denied by the RGC.<sup>28</sup> Also parts of the diplomatic corps in Cambodia more closely monitored contentious cases after public pressure on the RGC to react on the criticism increased in 2012.<sup>29</sup> The RGC reacted on allegations and appeals to interfere into the courts with refrain, stating that judicial cases are the responsibility of courts in which the executive could not interfere.<sup>30</sup> The RGC also criticized the international community of political interference into the internal affairs of the Cambodian state.<sup>31</sup> Likewise criticized were the reports of the UN Special Rapporteur for Human Rights in Cambodia, whom government officials during his last visit in 2012 refused to meet. Only in December Prime Minister Hun Sen admitted shortcomings of the current human rights situation in a national radio broadcast stating: ‘Now there is so much freedom. But it doesn’t mean that we don’t recognize the gaps that need to be filled in’<sup>32</sup>.

### 1.3 Responsiveness, Accountability and Transparency of the Executive

COMFREL observed positively in 2012 that the responsiveness, accountability and transparency of the CPP led RGC has improved, though the pace of reform remained slow and in some sectors insufficient. The RGC has however in the second half of 2012 and the beginning months of 2013 been more responsive to public concerns and made also efforts to increase its transparency and accountability. Positively has been observed that current issues of public concern including the current state of human rights, the prevalence of corruption, the on-going labour conflicts in the textile sector and the urgent need for land reforms to prevent and resolve land conflicts have put the CPP led RGC under increasing public pressure leading to different reform initiatives and reform announcements throughout the year 2012.<sup>33</sup> The reform pressure increased particularly because of the commune council elections and the upcoming National Assembly elections in July 2013. The CPP hand only ensured a relative majority with 3,631,082 votes in the commune council elections, though kept its dominant position by winning a majority of commune councillors and commune chiefs. In addition the opposition parties SRP and HRP

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<sup>28</sup> Cambodia Daily: Hun Sen Says No Political Prisoners, 26.11.2012

<sup>29</sup> Cambodia Daily: Diplomats Shows Support for Charged Rights Workers, 21.12.2012; EU Ambassador Says Listen to UN Envoy, 11.12.2012

<sup>30</sup> Cambodia Daily: Hun Sen Says No Political Prisoners, 26.11.2012

<sup>31</sup> Cambodia Daily: Cambodian Government Accuses Europe of Interference, 15.11.2012

<sup>32</sup> Agency France Press (AFP): Cambodia Admits Shortcomings On Human Rights, 10.12.2012; Phnom Penh Post: Cambodia Snubs Critical UN Envoy, 15.12.2012

<sup>33</sup> COMFREL Government Watch 2012 (Final Results)

gained together 1,804,943 votes, whereas 3,209,501 voters stayed away from the polls.<sup>34</sup> The ambiguous results calculated in total number of votes casted, leaves uncertainty over the possible electoral outcomes of the NA elections 2013 and increased the pressure on the RGC to fasten the implementation of reforms. Examples below illustrate positively that the RGC did react to some extent on the increasing pressure in 2012 and the beginning months of 2013:

- *The Royal Government released an order dated 7th May 2012; with a moratorium to stop economic land concession however there has been lack of transparency in implementing the moratorium.*
- *Due to pressure from national and international stakeholders, the divisive draft laws on Non-Governmental Organizations and Trade Unions have not been adopted though controversies about its provisions continue. The RGC has reacted positively on the criticism in increasing its consultations with civil society organizations and trade unions. Prime Minister Hun Sen announced that the legislation might be postponed until after 2014 if necessary to reach a consensus. The draft law on Trade Unions was also modified in November for the fourth time.*
- *During the 2012 commune council election, the Anti-Corruption Unit set its sights on illegal fees paid at the commune level and intended to stamp out a decades-old culture of bribery within the next four months, according to ACU officials announcement. This announcement stated that 22 ministries would be involved in the new initiative that would examine 2,000 services offered at the commune level and The Ministry of Economics and Finance would set up a scheduled fee for each type of public service.*
- *In June 2012 the RGC announced overdue land reforms to accomplish the allocation of 3 million land titles in 2013 in order to prevent land conflicts, shortly after the commune/sangkat elections on 3<sup>rd</sup> June 2012. However on-going land conflicts are not covered by the current land titling campaign.<sup>35</sup>*
- *In December 2012 the National Assembly adapted the draft law on the national budget which will bring a significant increase of the national budget for 2013 from 2,6 billion to 3 billion USD. However the RGC will allocate most of the increased national budget with total 400 million USD or 13,32 percent of all spending to the Ministry of Defense and the Ministry of Interior. The greatest increase in 2013 will be allocated to the Ministry of Defense with an increase of 17,3 percent to 245 million USD. Social affairs including nine ministries in the sectors of education, health, women affairs, social affairs,*

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<sup>34</sup> COMFREL: Final Assessment and Report on Commune Council Elections 2012, [www.comfrel.org](http://www.comfrel.org), p. 76

<sup>35</sup> Cambodia Daily: Government Tells Unions to Agree on Minimum Wage Demands, 23.01.2013

*labour, culture, information and religion will receive together 686 million USD, which is an 15,8 percent increase and therefore lower than the increase in spending for the defence sector. Funding for education will only slightly increase to 280 million USD from 245 Million USD in 2012. Same counts for the health sector which will also see only a slight increase from 193 to 225 million USD in 2013. For the economic sector the increase will be similar low from 231 to 254 million USD in 2013, whereby the agricultural sector in which the majority of Cambodia's population is employed will receive only 35,3 million USD which is only one percent of the total national budget.<sup>36</sup>*

- In 2012 the RGC had effectively implemented its promises to increase salaries of civil servants and military personnel by twenty percent.*
- In December 2012, eight month ahead of the NA elections, Prime Minister Hun Sen admitted that the current state of human rights needs improvements in a radio broadcast on national radio.<sup>37</sup>*
- In December 2012, seven month ahead of the National Assembly elections, 72 Phnom Penh Municipal Police officers were sacked, suspended or issued warnings for abusing their positions, and some were sent to the Anti-Corruption Unit (ACU) for questioning related to alleged misconduct, a senior police official said yesterday.<sup>38</sup>*
- In January 2013, six months ahead of the National Assembly elections, the RGC requested manufacturer to increase minimum wages for the garment sector following a speech of Prime Minister Hun Sen demanding salary increased to keep the labour in country. Increasingly Cambodia labour migrates to Thailand for higher salaries. The RGC however said an increase is only possible when the trade unions agree on minimum wage. Trade unions are divided about the question how high the minimum wage should be.<sup>39</sup>*
- In January 2013 The Anti-Corruption Unit (ACU) announced that nearly 20,000 civil servants have come forward to announce their assets as part of ACU's second round of mandatory declarations. The total number of civil servants is currently estimated about 23,000 according to Prime Minister Hun Sen.<sup>40</sup>*

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<sup>36</sup> The NGO Forum on Cambodia: The Budget Law was adopted by the National Assembly on 7<sup>th</sup> December, the Senate 14<sup>th</sup> December and promulgated by the King on 26<sup>th</sup> December for Public Use, retrieved on 25<sup>th</sup> January 2013, see also Cambodia Daily: 2013 National Budget to Rise Above 3 Billion USD, 12.11.2012

<sup>37</sup> Agency France Press (AFP): Cambodia Admits Shortcomings On Human Rights, 10.12.2012

<sup>38</sup> Phnom Penh Post: Cops Sacked, Suspended over Conduct, 04.02.2013

<sup>39</sup> Cambodia Herald: Hun Sen Forecasts 3 million Land Titles by 2013, 09.02.2012; Agency France Press: Controversy over Cambodia's Land Titling Plan, 06.10.2012

<sup>40</sup> Phnom Penh Post: Officials Rush to Meet Assets Declaration Deadline, 28.01.2013

- *In January 2013 the Ministry of Finance published a number of list of fees for business payments in order to increase transparency and contain bribe payments in business operations.*<sup>41</sup>
- *In January 2013 the RGC announced to return 250.000 hectares of land to citizens, which previously distributed as economic land concessions to private companies. LICADHO reported that more than 2,1 million hectares of land were granted to private companies including 106,000 hectares in 2012.*<sup>42</sup>

Beside the observed increase in RGC responsiveness, the RGC has to some extent also improved its transparency and accountability in the public finance sector in 2012. The National Assembly adopted in January 2012 a ‘Law on Public Procurement’ and a ‘Law on Financial Management for the Fiscal Year 2012’.<sup>43</sup> According to a recently released Asian Development Bank (ADB) report the current public finance policy outcomes however show only mixed results in regard to accountability and transparency. The report states: ‘(...) Public Expenditure Financial Accountability ratings (...) indicate a mixed but improving performance for Cambodia. (...). A comparison of the 2010 Public Expenditure Financial Accountability results with an earlier country financial accountability assessment undertaken in 2002 indicates significant improvement. (...) The anti-corruption assessment indicates important recent legislative and institutional developments that have prospects for future improvement but which have not yet achieved significant results (...).’<sup>44</sup>

Positively the RGC continued also its anti-corruption policy and campaigns in 2012 raising awareness among the Cambodian public including a nationwide campaign by the ACU in 1,700 communes informing villagers that facilitation payments to receive government services will be punished by law up to 15 years in prison.<sup>45</sup> On the Corruption Perception Index Cambodia has seen a slight improvement in 2012. Cambodia ranks now on the 157 instead of 162th place out of 182 countries. However, the score of 2.2 out of 10 remains very low in comparison to other countries in the region.<sup>46</sup>

Also a ‘Law on Access to Public Information’ is still lacking to this day, despite that the Cambodian public widely perceives that a law ensuring access to public information could lead to more transparency and accountability of the executive. A recently conducted public opinion survey in April 2012 by the

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<sup>41</sup> Phnom Penh Post: Ministry Lists Fees To Help Firms Avoid Graft Claims, 29.01.2013

<sup>42</sup> Phnom Penh Post: Cambodia’s Government Take Back Land, 07.02.2013

<sup>43</sup> Cambodian National Assembly: Press Release, 13.01.2012, [www.national-assembly.org.kh](http://www.national-assembly.org.kh)

<sup>44</sup> Asian Development Bank (ADB): Cambodia-Country Governance Risk Assessment and Risk Management Plan 2012, p. viii

<sup>45</sup> Phnom Penh Post: Payments Illegal Says ACU Chief, 31.07.2012

<sup>46</sup> Transparency International: Corruption Perceptions Index 2012, December 2012; see also Cambodia Daily: Cambodia Retains Its Reputation for Corruption, 06.12.2012

Cambodian Centre for Independent Media (CCIM) revealed that 80 percent share the opinion that a right to access public information and public information is important, though many confused the right to access to information with general information provided for by electronic media. A respective law and a public debate on the importance of access to public information could raise general public awareness, would oblige government officials to provide requested information and hold them more accountable, even when only a minority of the Cambodian electorate would use this right. Currently any public information can be withheld leaving it to the goodwill of government officials to inform citizens upon request or not. Especially during current land-conflicts was often revealed that affected citizens were not informed or only informed, when development projects were already approved, leaving them only the option to resettle or to resist.<sup>47</sup> The CCIM survey also revealed that 33 percent of interviewed citizens who have sought information from authorities responded that they met obstacles in receiving the information.<sup>48</sup> Public policies in Cambodia often appear to this day as a matter of secrecy. A legal obligation could empower the Cambodian public. Initiatives to adapt such a law failed in past years despite continuing efforts by a number of civil society organizations including COMFREL and non-ruling-political parties to lobby for such a law. The SRP recently re-proposed a respective bill in January 2013, but failed in the NA like in the year 2011.<sup>49</sup>

Open remain also how effective the RGC is implementing its reforms. A recent COMFREL survey revealed that predominantly in remote rural areas the RGC lack behind its reform plans. Citizens in these areas interviewed found that elected officials were ‘not or only slightly’ responsive to their needs. About sixty percent said they lack responsiveness in public health services, forty percent said to lack responsiveness in public infrastructure services and lack responsiveness in support for agricultural development and fifty percent said to lack responsiveness in public education services.<sup>50</sup>

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<sup>47</sup> One among many examples reported in 2012 is the construction of a hydropower plant on the Sesan river leading to a resettlement of five thousand citizens, see Phnom Penh Post: Little Information on Lower Sesan 2 Dam: Report, 25.01.2013; another example for resettlements in Phnom Penh see Mbako, Chi; et.al: Forced Eviction and Resettlement in Cambodia: Case Studies from Phnom Penh, Washington University Global Studies, Issue 1, Volume 9, 2010, p. 63 and the recently published study of ADHOC: A Turning Point? Land, Housing, and Natural Resources Rights in Cambodia in 2012, [www.adhoc-cambodia.org](http://www.adhoc-cambodia.org)

<sup>48</sup> Cambodian Center for Independent Media (CCIM): Freedom of Information – Advancing Research & Actions, Phnom Penh April 2012, p. 5

<sup>49</sup> Phnom Penh Post: Freedom of Information Law Dealt Blow, 24.01.2013

<sup>50</sup> COMFREL: Summary Report on Results of Citizen’s Score Card on Elected Officials to Response to the Priority Needs at Remote or Indigenous Communes, Annual Report 2012, [www.comfrel.org](http://www.comfrel.org)



The slow pace of reforms in 2012 on the other hand is to some extent explained by the RGC's pre-occupation with Cambodia's first ASEAN presidency. This redirected public policies and public attention to the ASEAN summits throughout 2012. The RGC was hereby in a total new position which was unquestionable a main challenge for the RGC to demonstrate its capabilities in multilateral diplomacy. The ASEAN presidency has been perceived a mixed success for the RGC improving its international reputation including diplomatic gains, but also led to criticism that the RGC has moved politically closer to China in its position on the territorial conflicts in the South Chinese Sea leading to some discord with the Philippines and the USA during Cambodia's ASEAN presidency in 2012.<sup>51</sup>

Domestically the ASEAN presidency meant however fewer domestic policy changes, despite increasing pressures on the RGC to foster reforms. This counts especially for the social sector which is in need of urgent reforms demonstrated by an increase in social unrest including labour and land conflicts in 2012 as examined later in this report.<sup>52</sup> The current enormous social challenges of Cambodia's economic transition are the growing urbanization, a lack of economic development in a number of rural areas, a persistent high un- or underemployment rate among the Cambodian youth, a continuing high poverty rate, particularly in rural areas, and a lack of quality improvements in public health and education. Nonetheless the National Assembly has approved a state budget for 2013, which mainly increase spending in security, whereas the social sector as well as the economy will see only slight increases in 2013.<sup>53</sup> The RGC favours a pro-rich development strategy hoping it will lead to a trickle-down effect benefiting the whole population. This policy basically seems to follow the Chinese development strategy of Deng Xiaoping known as 'let some people get rich first'<sup>54</sup>.

Despite this shift the current RGC development policy compares more to an extensive system of patrimonialism and nepotism than a trickle-down economic development strategy. To this day this has mainly favoured some state employees including military personnel and parts of the economic elites including the family of the Prime Minister, but if it benefits the general population remains to be seen. Currently the 53.3 percent of Cambodia's population live below the international poverty line (less than

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<sup>51</sup> Cambodian Daily: ASEAN Unity Tested Under Cambodia's Watch, 23.11.2012 for a critical assessment, whereas positive assessments see East Asia Forum: A Job Well Done: Cambodia as ASEAN Chair in 2012, 09.01.2012

<sup>52</sup> Phnom Penh Post: IMF Revises GDP Projection for Cambodia Upward to Seven Percent, 03.10.2012

<sup>53</sup> Cambodia Daily: 2013 National Budget to Rise Above 3 Billion USD, 12.11.2012

<sup>54</sup> Cambodia Daily: Hun Sen Encourages Cambodians to Emulate Chinese Wealth, 30.12.2012; see also Fan, Cindy C.: China's Eleventh Five Year Plan (2006-2010). From 'Getting Rich First' to 'Common Prosperity', Eurasian Geographic and Economics, Vol. 47, No. 6, 2006, pp. 708-723



two USD per day), although the Cambodian poverty rate is set lower, because it is calculated on an income of 1,25 USD per day only, counting then 22.8 percent of the population.<sup>55</sup> Nepotism, which has been observed in the past<sup>56</sup>, was demonstrated in 2012 with the appointment of Hun Manet, a son of Hun Sen to high ranking positions within the Royal Cambodian Armed Forces (RCAF). There has been information of the nomination of two Prime Minister's sons, Hun Many and Hun Manet, as well as other sons of CPP senior leaders as CPP candidates for the National Assembly election 2013<sup>57</sup>. Whilst the result of this could be an increase of youth leadership position as national elected representatives, nepotism has increasingly been used to secure political power positions. . .<sup>58</sup>

The Cambodian public remained widely excluded from the observed changes in the development policy and the policy shift towards the PRC, though they went not unnoticed. The increasing self-confidence of the CPP led RGC to resist national and international pressures for democratic reforms has demonstrated the public in 2012 that the RGC has deepened its political and economic cooperation with the Government of the People's Republic of China (PRC) led by the Communist Party of China (CPC). The improved relations with the PRC became particularly visible during Cambodia's ASEAN presidency in 2012, when China's position on the South Chinese Sea conflict was accommodated by the RGC leading to diplomatic discord with the Philippines and the USA.<sup>59</sup> The shift was also demonstrated with inter-party exchanges between the CPP and CPC in June 2012.<sup>60</sup> This has raised concerns among political observers that the CPP led RGC might move towards a 'Chinese-style political system' leading to more authoritarianism and the consolidation of a one-party system.<sup>61</sup>

Another important development observed in 2012 concern the role of the dual chief executive in Cambodia's political process. The powers of the chief executive are principally shared between the Head of Government and Head of State as stipulated in the Cambodian constitution. Although the passing away of King Father Norodom Sihanouk on 15<sup>th</sup> October 2012 directed the attention to the mourning,

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<sup>55</sup> these data have been released by the World Bank in 2012 relying on the only available data for the poverty rates in Cambodia from the year 2008. No newer surveys have been conducted since then. Compare World Bank: Poverty Rates at International Poverty Lines. World Development Indicators 2012, p. 69

<sup>56</sup> Asia Times Online: One Big Happy Family in Cambodia, 20.03.2007, [www.atimes.com](http://www.atimes.com)

<sup>57</sup> In February 2013

<sup>58</sup> Cambodia Daily: Hun Sen's Son in Meteoric Rise Through Royal Cambodian Armed Forces Ranks, 30.01.2012; Phnom Penh Post: Two of PMs Sons Eye Political Office, 20.02.2013; Radio Free Asia: Nepotism in Cambodia, 15.01.2012

<sup>59</sup> New York Times: China Stalls Move to Quell Asia Disputes over Territory, 19.11.2012

<sup>60</sup> Xinhua News Agency: Senior CPC Leaders Meet Cambodian Prime Minister, 15.06.2012; Heng, Pheakdey: Cambodia-China Relations: A Positive-Sum Game?, in; Journal of Current Southeast Asian Affairs, Vol. 31, No. 2, 2012, pp. 57-85

<sup>61</sup> COMFREL Government Watch Final Results (2012)

the monarchic tradition and the important role of King Father Norodom Sihanouk for Cambodia, questions have been raised about the future of the monarchy and the role of the Head of State. Looking back into history, Former King Norodom Sihanouk was not only Cambodia's most prominent political leader gaining independence from France in 1953, but also key figure for Cambodia's reconciliation process and an outspoken critic and supporter of the CPP demonstrating that the Head of State can be a counterbalancing and correcting force within the chief executive.<sup>62</sup>

The monarchy is to this day very popular in Cambodia as demonstrated in 2012 and early 2013 when hundreds of thousand citizens attended the mourning ceremonies of King Father Norodom Sihanouk held in Phnom Penh, starting in late October 2012 lasting until 7<sup>th</sup> February 2013 when he was cremated.<sup>63</sup> After the end of the mourning period, his son and King Norodom Sihamoni could continue the heritage of his father, though he was politically widely passive during the life-time of his father. This however could change in coming years. The newly-enacted 'Law on the Establishment of Supreme Council of National Defense' (SCND), which was approved by 85 out of 97 MPs present on 24<sup>th</sup> January 2013, signals a possible change in this direction, though the SCND has not yet been established.<sup>64</sup> Moreover provisions of the Cambodian constitution 1993 provide the Head of State substantial powers for counterbalancing and checking the powers of the Head of Government with the limitations that those powers cannot contradict the constitutional provision giving full sovereignty to the people (art. 51) and the constitutional provision stipulating that 'the King of Cambodia shall reign but shall not govern is permanent and shall not be amended (art. 17)'.<sup>65</sup>

## 2. Political Participation, Pluralism and Competition

COMFREL found that no substantial progress has been made in 2012 in terms of improvements of the substantive quality of the democratization process. COMFREL has observed throughout the year 2012 a continuing trend towards a decline in political participation accompanied by political apathy and a decline in political pluralism and competition among political parties as already observed in 2011. Political participation continued to be widely constrained for political parties other than CPP, civil

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<sup>62</sup> Cambodia Daily: A Nation Bids Farewell To Its Beloved King Father, 05.02.2013

<sup>63</sup> Cambodian Daily: The Final Journey of King Father Norodom Sihanouk, 03.02.2013

<sup>64</sup> COMFREL Parliamentary Watch 2012 (Final Results)

<sup>65</sup> See an examination of those powers of the Head of State as stipulated in the Cambodian constitution from 1993 in Por, Heng: The Modern Era of Cambodian Constitutionalism, in: Introduction to Cambodian Law (Eds. HorPeng, Phallak, Kong and Menzel, Joerg – Konrad Adenauer Foundation), Phnom Penh 2012. pp. 48-52

society organizations dissenting with public policies of the RGC and the Cambodian public sympathizing with oppositional and dissenting voices. The current multi-party system has further regressed towards a one-dominant party system with tendencies to consolidate a one-party system.

Current legal provisions and political practices that reach from minor to severe violations of civic and political freedoms by different political stakeholders in Cambodia has led to a general decline in political participation over the years up to 2012 causing consequently a widely observed political resignation in the Cambodian public. The perceived risks associated with any form of political participation including possible economic and social or even legal repercussions has led many in the Cambodian public to refrain from politics. The media continued to be extensively controlled and monitored by the CPP led RGC disadvantaging oppositional and dissenting voices. The CPP led RGC has also not signaled to encourage an open and plural political discourse on issues of public concern. Other political parties have not been able to seriously challenge the CPP because of a lack of human resources, organizational and financial means and continuing constraints on political competition.

## 2.1 Political Parties and Political Competition

The multi-party system remained in 2012 weakened because of procedural restrictions within the legislative as examined in the chapter ‘The Legislative in the Policy-Making Process’ constrains on political participation for oppositional political parties and weaknesses in human resources and organizational and financial capabilities of political parties other than the CPP. The multi-party system has shifted in 2012 further towards a one-dominant party system with tendencies to the consolidation of a one-party system. The exclusion of opposition parties, especially the Sam Rainsy Party (SRP) but also to some extent the Human Rights Party (HRP) from the political process continued in 2012. Criminal charges against party leader Sam Rainsy and his conviction to twelve years imprisonment were upheld in 2012 despite a widely shared perception among a number of international and national stakeholders that the charges are politically motivated to weaken the opposition ahead of the National Assembly Election 2013.<sup>66</sup> Also charges against other SRP MPs including the loss of their parliamentary immunity as reported earlier in the annual report 2011 have sent over the past years a strong signal to the Cambodian electorate that any support of opposition political parties, especially of the SRP implies potential risks

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<sup>66</sup> See for example European Parliament: European Resolution on the Situation in Cambodia 2844, 24.10.2012

reaching from social to economic to legal repercussions. Accordingly the Cambodian public not supportive towards the CPP has limited its involvement in political affairs.<sup>67</sup>

Despite these constraints, the SRP and HRP have been successful in 2012 to merge into one party for the upcoming National Assembly Election in order to challenge the CPP. The newly formed ‘Cambodia National Rescue Party’ (CNRP) under the leadership of Sam Rainsy as president of the CNRP, despite his criminal conviction and absentee from the upcoming elections, will be obviously a test-run for the support of the opposition leader in exile. The SRP is now headed by Kong Korm and Sam Rainsy’s wife Tioulong Saumara as vice-president. Kong Korm who has been president of the SRP ever since party leader Sam Rainsy became president of CNRP, holds a senate seat and was a former member of the CPP Central Committee and former Minister of Foreign Affairs before 1993. The Human Rights Party continues to be headed by Khem Sokha as president and by March 2013 he will be vice-president of the CNRP.<sup>68</sup> The new party announced in December 2012 to change its political strategy to win elections from traditional issues concerning past injustices and territorial losses to pragmatic policies proposals improving the livelihood of Cambodians and providing ‘a realistic choice of government’<sup>69</sup>.

Despite recent announcements by CNPR, which could allow a possible change of political dynamic between the opposition party and the CPP, the oppositional party SRP and HRP were nevertheless observed in 2011 and 2012 to sustain fundamental opposition against the CPP led RGC. This involve upholding allegations against some of its highest ranking members including Prime Minister Hun Sen of criminal acts, voter manipulation, money-politics and lack of patriotism because of an alleged close affiliation of the CPP to Vietnam’s government. A number of sincere criminal charges were upheld by the SRP against high-ranking CPP members in 2012 leaving little space for political maneuvering between the CPP and SRP. Among those SRP accusations are also allegations of murder:

- *Some of those allegations have been put forward by the SRP and upheld in 2012 including allegations of involvement of Hun Sen’s bodyguard unit in a grenade attack on a SRP demonstration in 1997.<sup>70</sup> SRP upheld allegations against the Minister of Foreign Affairs, Hor Nambong for having led a Khmer Rouge prison camp*

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<sup>67</sup> COMFREL Parliamentary and Election Watch 2012 (Final Results)

<sup>68</sup> Cambodian National Rescue Party, [www.nrp-dc.com](http://www.nrp-dc.com)

<sup>69</sup> Phnom Penh Post: Shift in CNPRs Political Strategy To Win Elections, 06.12.2012

*named Boeung Trabek. Hor Namhong repeatedly denied these allegations, saying he was himself a prisoner of the Khmer Rouge.*<sup>71</sup>

- *SRP upheld allegations against Hun Sen's wife Bun Rany for killing the popular movie star Ms. Piseth Pilika.*<sup>72</sup>
- *HRP accused the CPP regime of being the same Khmer Rouge regime in terms of evicting people from their residencies and lands.*

The CPP led RGC continue to use a combination of 'hard power' and "soft power" in their competition strategies. On one hand the use of "hard power" included reaction in response to the allegations of lawsuits, either threatening or filing law-suits using their influence on the legal system and its rigid provisions to silence the SRP. The newest case involve SRP MP Chan Cheng, who lost in January 2012 his parliamentary immunity adding one more SRP MP to the ones who lost their parliamentary immunity in the past years in 2011 and 2012. Most prominent among those were charges against SRP MP Mu Sochua, who have regained her parliamentary immunity in August 2012 after she has lost it for alleged defamation of Prime Minister Hun Sen in 2009.<sup>73</sup> The Prime Minister also proposes a law for code of ethics for politicians. On the other hand the use of 'soft powers' was reflected in a policy of accommodation in 2012. Total 569 SRP members defected before the commune council elections in April and May 2012 to the CPP including one elected senator for Kampong Cham Province, nine commune councilors and two members of the SRP central committee.<sup>74</sup> This might in the long run undermine the reliability and credibility of the SRP and strengthen the CPP, as this has been observed in the past in the case of FUNCINPEC, who has lost electoral support after allying with the CPP.<sup>75</sup>

Nonetheless, the policy of accommodation can also be explained with the strong links which the CPP have built to economic elites over the years and the use of 'money-politics' in handling political disputes with opponents encouraging defections. As explained earlier, the CPP has developed over the years an extensive system of economic patrimonialism providing incentives for defectors and strengthening party loyalty through promotions. The CPP also continued in 2012 to take advantage of its government position using state resources in order to strengthen its own party networks and campaign efforts,

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<sup>71</sup> Sam Rainsy Party (SRP): I reaffirm that HorNamhong is a former Khmer Rouge Prison Chief, [www.samrainsyparty.org](http://www.samrainsyparty.org) retrieved on 16.01.2013

<sup>72</sup> Sam Rainsy Party (SRP): Accusations, [www.samrainsyparty.org](http://www.samrainsyparty.org) retrieved on 16.01.2013

<sup>73</sup> Voice of America (VOA): After Three Years, Mu Sochua's Parliamentary Immunity Restored, 04.08.2012, [www.voa.org](http://www.voa.org) retrieved on 13.01.2013

<sup>74</sup> Phnom Penh Post: Mass Defection from Sam Rainsy Party, 10.05.2012; 'SRP Exodus Continues', 11.05.2012

<sup>75</sup> COMFREL Election Watch 2012 (Final Results)

despite that legal provision prohibits civil servants, police and military officials to get involved in political party activities during their time in office and political parties are prohibited to use state sources. Likewise all TV and radio stations continued to be dominated and controlled by the CPP led Ministry of Information giving other political parties fewer possibilities to reach the Cambodian public continuing in 2012 the lack of a level playing field for political competition.<sup>76</sup>

Regarding the misuse of state resources for political party purposes COMFREL continued to observe throughout the year 2012 numerous cases of violations of current legal provisions which prohibit political parties to misuse state resources for political party purposes. The CPP however has continued this questionable practice despite demands to comply with current laws.<sup>77</sup> Between January and December 2012 COMFREL counted in total 520 cases where civil servants and military personnel were actively involved in political party activities attending events of the CPP and demonstrating in public their loyalty to the party. In 47 cases civil servants and military personnel participated in party events and expressed their endorsement of the CPP. In two of those cases other political parties than the CPP were criticized by officials. In 22 cases the CPP used public premises for party meetings.<sup>78</sup>

Likewise the media except for FM 105, FM 106.5, Radio Free Asia (RFA), Radio Voice of America (VOA) and Radio France International (RFI) broadcasted in 2012 more often in favor of the RGC and the CPP, while often negatively broadcasting about the SRP and HRP. Between January and October 2012 COMFREL Media Watch monitored TVK, CTN, Bayon News and FM 105 MHz and found that Bayon News and CTN continued an imbalanced coverage in favor of the CPP, while counting more negative broadcasts for the SRP and HRP. This trend was also observed in 2011. TVK positively provided a more balanced coverage through an equitable news program, whereas FM 105 was the only broadcaster in Cambodia giving more access to the opposition, the pro-ruling party and the independence. . . . FM 105 however is only reaching the audience of the capital Phnom Penh and few provinces. Bayon TV, CTN and TVK enjoy nationwide coverage including also nationwide coverage for affiliated radio broadcast stations. COMFREL finds that as long not all private TV and radio channels are legally obliged to balance their political coverage no equal level playing field for political competition

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<sup>76</sup> Un, Kheang: Cambodia: Moving Away from Democracy, December 2011 (Ed. International Political Science Review)

<sup>77</sup> COMFREL Report: Misuse of State Resources for Political Party Purposes, May 2012

<sup>78</sup> COMFREL Government and Election Watch 2012 (Final Results)

in the media sector can be achieved.<sup>79</sup> Currently only digitalized media (internet broadcasts and social media) counterbalance the CPP dominance. According to ‘social bakers’, 739,040 Cambodians are Facebook users, whereas according to ‘WEARASOCIAL’, fifty percent of Cambodian Facebook users are between the age of 18 and 24 years showing that a new generation of eligible voters emerge, who cannot be anymore dominated by traditional media.<sup>80</sup> However today only few Cambodians access this media and this will most likely not change in coming years, requiring that TV and radio stations need to ensure an equal level-playing field for political competition.<sup>81</sup>

In 2012 other political parties currently represented in the National Assembly, such as the Norodom Ranariddh Party (NRP) and FUNCINPEC, continued the internal and intra party conflict and lack organizational and financial means to agitate as a genuine challenger of the CPP. Their weaknesses however are explained less by restrictions on political participation and competition like in the case of SRP, but more by party splits within the FUNCINPEC and the NRP. The once strong royalist FUNCINPEC party, who has split into two minor parties ahead of the National Assembly elections 2008 before announcing to merge again into FUNCINPEC in 2012, has regressed in the past years to a minor party despite their initial political success between 1993 and 2003. The party was long headed by Prince Norodom Ranariddh before he lost his position after a corruption affair leading the party to split in 2006. Neither the NRP nor FUNCINPEC had since then made any electoral gains and holds currently no seats in the Cambodian Senate after losses in the commune council elections 2012. The NRP expelled Prince Norodom Ranariddh in August 2012 from the party, renamed the party ‘Nationalist Party’ (NP) and announced to merge with the FUNCINPEC for the upcoming National Assembly election 2013.<sup>82</sup>

## 2.2 Cambodian Public and Political Participation

The year 2012 was overshadowed by increasing social tensions in the textile industry and land conflicts affecting parts of the rural and urban population dominating the domestic political process. Latter have been persuaded or forced to make way for the industrialization of the agriculture sector and

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<sup>79</sup> COMFREL Media Watch Final Results (2012)

<sup>80</sup> WEARESOCIAL: [www.slideshare.net/wearesocialsg/we-are-socials-guide-to-social-digital-and-mobile-in-cambodia-2nd-edition?ref=www.visit-angkor.org/blog/2012/11/13/we-are-social-report-oct-2012-social-digital-and-mobile-in-cambodia/](http://www.slideshare.net/wearesocialsg/we-are-socials-guide-to-social-digital-and-mobile-in-cambodia-2nd-edition?ref=www.visit-angkor.org/blog/2012/11/13/we-are-social-report-oct-2012-social-digital-and-mobile-in-cambodia/) and Socialbakers: [www.socialbakers.com/facebook-statistics/cambodia](http://www.socialbakers.com/facebook-statistics/cambodia)

<sup>81</sup> COMFREL Media Monitoring 2012 (Final Results)

<sup>82</sup> COMFREL Election Watch 2012 (Final Results); see also Xinhua News Agency: Cambodia's Norodom Ranariddh Party Changes Name, Sets to Merge with FUNCINPEC, 24.08.2012



infrastructure projects including the construction of hydropower dams and industrial complexes. While those projects are meant to foster economic and social development in Cambodia, affected citizens living in sights of major development projects were often circumvented in the policy decision making process, lost property and their livelihood, causing social unrest and in some cases violent outburst between parts of the population and security forces employed by the RGC and in some cases by private companies to forcefully resettle citizens in 2012. Civil society activists, political and community activists working in the field of environment, human rights protection and democracy promotion were in some instances accused in 2012 of conspiring against urgently needed development projects of the RGC and in some cases prosecuted and imprisoned for alleged criminal offenses.

The RGC was in return blamed by those activists for a concerted crackdown on dissent and opposition to RGC public policies leading to polarizations between the RGC and parts of the population. Though positively the number of human rights violations in regard to civic and political rights has decreased from 2010 with 56 reported cases, to 46 reported cases in 2011 and 24 cases in 2012 according to a report of LICADHO, published in December 2012.<sup>83</sup> The pattern of violations remained principally the same as observed in 2011, characterized by a lack of protection of the freedoms of assembly and expression. A number of domestic and international stakeholders perceive this practice, which has cumulated over the years, a sincere limitation on the space of political participation in order to provide the RGC with all freedoms needed, to impose development policies on Cambodian citizens considered necessary for the country's development, whereas the social and economic needs of those citizens, who do not benefit from current development policies are marginalized.<sup>84</sup> Six cases in 2012 illustrate this marginalization leading even to death of two citizens:

- *In April 2012 the environment activist Chut Wutty was shot dead by a military police officer in Koh Kong Province. The perpetrator was killed in the incident and charges were dropped by the provincial court. Human Rights Organizations criticized the investigation.*<sup>85</sup>

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<sup>83</sup> LICADHO: Attacks & Threats Against Human Rights Defenders in Cambodia 2010-12, December 2012, p. 53; see also Cambodian Human Rights Portal, [www.sithi.org](http://www.sithi.org)

<sup>84</sup> this perception is examined by Springer, Simon: Cambodia's Neo-Liberal Order: Violence, Authoritarianism and the Contestation of Public Space, Routledge: London 2012

<sup>85</sup> Amnesty International: Killing of Cambodian Environment Activist Must Be Investigated, 26.04.2012

- *In May 2012 a 14-year old girl was shot dead during a land eviction operation by military and police forces in Broma Village, Kratie Province. No one has been held accountable by the end of 2012. NGOs criticized the investigation.*<sup>86</sup>
- *In May 2012 courts sentenced 13 Boeng Kak Lake representatives and human rights defenders to two and a half year imprisonment on charges of protesting a land eviction. HR organizations have criticized the verdicts and charges.*<sup>87</sup>
- *In July 2012 Mom Sonando, an outspoken critic of the government and radio broadcaster (FM 105) was arrested on alleged charges of involvement in an by the RGC alleged 'secessionist plot' in Kratie province. In October 2012 he was sentenced to twenty years imprisonment despite that according to human rights organizations no evidence was presented linking him to the alleged 'secessionist plot' in Kratie. The 'secessionist plot' is widely suspected among civil society organizations in Cambodia to have been only a land-conflict.*<sup>88</sup>
- *In December 2012 textile workers protesting at the Svay Reng Manhattan Special Economic Zone were shot at. Three garment workers were wounded. The governor of Bavet, Chhouk Bundith was the prime suspect for the shooting, was later charged but never arrested and cleared in December 2012 from all charges leaving a Bavet police official as sole remaining suspect. Human Rights organizations criticized the investigations.*<sup>89</sup>
- *In December 2012 the prosecution of Born Samnang and Sok Sam Oeun to twenty years imprisonment for allegedly killing Chea Vichea in 2004 was re-upheld by the Appeal to the Court. There was so surprised because in 2008 the Supreme Court decided to release both of the accused while transferring the case to the appeal court to continue the investigation. The brother of Chea Vichea and current trade union leader of the Free Worker Trade Union alleged that the two cannot have been the perpetrators and called the verdict unjust. A coalition of 19 NGOs called the verdict 'grossly unfair' ignoring evidence for the accused.*<sup>90</sup>

### 2.2.1 Strikes, Demonstrations, Protests and the Freedom of Assembly

The number of demonstrations, strikes and protests has drastically increased in 2012 to 499 cases from 231 in 2011 according to reports of RGC law enforcement agencies.<sup>91</sup> Most demonstrations were reported for the textile sector where working conditions and labor wages remained below standards. In 2012 according to figures released from the Garment Manufacturing Association of Cambodia (GMAC)

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<sup>86</sup> LICADHO: Licadho Calls for Investigation Into Deadly Kratie Shooting, Press Release 17.05.2012

<sup>87</sup> Cambodian Human Rights Portal, [www.sithi.org](http://www.sithi.org)

<sup>88</sup> LICADHO: The Mom Sonando Case Explained, August 2012

<sup>89</sup> CCHR: No Justice in Bandith Country, Media Comment 20.04.2012; LICADHO: Stop Gun Violence Impunity: Arrest and Prosecute the SvayRieng Shooter, 21.02.2012

<sup>90</sup> TheCambodia Daily: Two Resentenced for Murder of Union Leader Chea Vichea, 28.12.2012

<sup>91</sup> Cambodian Daily: Crime Drops Even As Protests Surge: Government, 31.12.2012

a threefold increase in strikes in comparison to the year 2011 with more than 100,000 workers in 101 factories participating at least in one strike was counted in 2012. The textile industry currently deploys estimated 430,000 workers in 400 garment and footwear factories in Cambodia.<sup>92</sup>

Trade unions have to this day not succeeded to significantly improve labor conditions in the textile sector. The Ministry of Labor counted in 2012 alone 1,686 workers fainting in twenty factories. The Free Worker Trade Union, a trade union thought to be close to opposition parties counted in total 2,107 factory workers fainting in 29 factories.<sup>93</sup> How many workers are fainting a year in the textile sector has become a common measure to assess working conditions, showing how desperate the working conditions in the textile sector must be. Trade unions claim that low wages force workers to save on nutrition causing the fainting beside a lack of proper ventilations in a number of factories. According to figures of the Ministry of Labor the number of fainting workers has decreased in comparison to 2011 from 1,900 to 1,686, but increased in the number of factories from 12 to 24. Extremely low wages in the Cambodian textile sector have also increased migration pressures in past years. More Cambodian workers are forced to work now in Thailand, where wages are four times higher. Currently the textile sector pays only a minimum average wage of about 61 USD per month.<sup>94</sup>

The current weakness of the labor movement is mainly explained by organizational weaknesses of the labor movement, but also caused by internal divisions along party affiliations. Currently Cambodia has 600 labor unions, a six fold increase from sixty labor unions in 2010.<sup>95</sup> Labor unions closer affiliated to CPP do principally better in negotiations for improvements of labor conditions than those affiliated to the SRP. The division of the labor movement along party affiliations has increased fragmentations.<sup>96</sup> Demonstrations, strikes and protests in 2012 were often accompanied by the use of excessive force of law enforcement officials underlining that labor conflicts are a heavily contested social, but also political space between the opposition and government. A number of violent incidents in 2012 demonstrated a lack of law compliance of some law enforcement authorities and continued a trend of increasing social repression already observed in 2011. Examples below illustrate this concerning trend:

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<sup>92</sup> GMAC cited in Cambodia Daily: Garment Factory Worker Strikes Increased Threefold in 2012, 04.01.2013

<sup>93</sup> Xinhua News Agency: Some 1,686 Workers Faint in Cambodia in 2012: Official Report Says, 02.01.2013

<sup>94</sup> Cambodia Daily: In Garment Sector – A Labor Movement Divided, 16.12.2012

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

- *In February 2012, 1,000 Garment workers of a US owned company demonstrated in Svay Reng in the Manhattan Special Economic Zone for increased salaries and better working conditions. During the event three female workers were allegedly shot by Bavet City Governor Chhouk Bandith, who has opened fire on the crowd. Only after a long row of protests and international pressures the case was investigated. To this day the mentioned governor was not charged.*<sup>97</sup>
- *In July 2012 about 4,000 workers from factories that supply Levis and Gap were blocked by police after they attempted to march from Kandal province to the Ministry of Labor, the office of Hun Sen's Cabinet, the US Embassy and the EU office. The police and Labor Ministry officials thwarted the march after ninety minutes. During the clash, several workers sustained minor injuries. The workers were employed by factories owned by Tai Yang Enterprise. They had been on strike since June 25, 2012, and were demanding travel, accommodation, performance and maternal bonuses.*<sup>98</sup>
- *In July 2012 a Cambodian Confederation of Unions representative, Rong Panha, was savagely beaten during a labour march. Rong Panha had marched with 10 garment workers from Freedom Park across Phnom Penh to submit a petition to the Prime Minister at his villa. After the group requested some time to rest, the police began to physically assault them. Though seriously injured, Rong Panha was taken away in a police truck and held for 48 hours in detention. He was forced to thumbprint a confession apologizing for instigating the conflict between protesters and police.*<sup>99</sup>

Beside strikes in the textile sector, land conflicts continued in 2012 to be the main source for social unrest as also observed in 2011. The Human Housing Rights Task Force estimates that about 700.000 people were since the year 2000 affected from land-disputes.<sup>100</sup> Crackdowns during land protests, forced evictions and resettlements were more often violent than during strikes in the textile sector continuing also a trend already observed in 2011, whereas the number of arrest dramatically increased to 201, doubling the arrests made in 2011. Of those arrested, 32 were charged and imprisoned, mostly on charges of destroying private property, faking documents and encroaching on private property.<sup>101</sup>

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<sup>97</sup> Phnom Penh Post: Labor Shortage in Cambodia's Garment Industry, 07.12.2012

<sup>98</sup> Human Rights Portal, [www.sithi.org](http://www.sithi.org)

<sup>99</sup> Ibid.

<sup>100</sup> Cambodian Daily: Arrests of Land Right Activists Doubled in 2012, 25.01.2013

<sup>101</sup> ADHOC: A Turning Point? Land, Housing, and Natural Resources Rights in Cambodia in 2012, [www.adhoc-cambodia.org](http://www.adhoc-cambodia.org)

The increase in violent incidents led human rights organizations to conclude that the year 2012 was the ‘worst year for land disputes’<sup>102</sup> despite the on-going land-title scheme policy of the RGC to respond to increasing grievances among Cambodia’s public affected by land disputes. Total thirteen cases of severe land-conflict cases were observed in 2012 continuing a trend of social repression already observed in 2011 in the textile industry and during land disputes as illustrated below<sup>103</sup>:

- *In January 2012 eight villagers, including a female police officer, were arrested during the violent forced eviction of 300 families from Borei Keila. The process was overseen by over hundred mixed police forces. Police also fired tear gas and live ammunition during the eviction. At least twelve people were injured including one policeman, some seriously.*
- *In January 2012 twenty-four former Borei Keila residents and six children, including a 3-month-old baby, were illegally detained at the Prey Speu Social Affairs Center after being arrested at a peaceful protest in front of Phnom Penh municipal hall. None of the group were charged or suspected of any crimes. The villagers were protesting to demand the release of fellow villagers arrested earlier that month during a violent forced eviction. Most were forced to escape the center by climbing over a wall. They spent several days in detention.*
- *In January 2012, military personnel acting as security guards for TTY Co. Ltd opened fire on a group of villagers who had gathered to prevent the clearing of their farmland by the company’s excavators. The cassava fields of 203 families were destroyed before the villagers were able to harvest their crops. Four villagers were injured by bullets. None of the authorities present during the shooting attempted to arrest the perpetrators, though three company employees were later arrested – two security guards and the general manager. They are awaiting trial.*
- *In January 2012, San Samneang, a land rights activist from Banteay Meanchey, was summoned to court in Battambang for questioning on charges of intentional damage to property. The summons contained no information regarding the nature of the acts said to have given rise to the charges, such as the date, the location or specific legal bases.*
- *In February 2012 about 200 villagers involved in a land dispute with a company owned by CPP Senator and businessman Ly Yong Phat – gathered in front of the Kampong Speu Provincial Court to demand the release of community representative Chum Srey Oun (for background, see Cases 5 & 30). They were dispersed by approximately 60 armed military soldiers who threatened to shoot if the demonstration continued.*

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<sup>102</sup> Phnom Penh Post: Cambodia’s Worst Year for Land Disputes, 24.01.2013

<sup>103</sup> All cases reported here have been extracted and overtaken in most parts in the same wording from the LICADHO report: Attacks & Threats Against Human Rights Defenders in Cambodia 2010-12, December 2012, p. 53

- *In March 2012 two community representatives from Koh Kong province, TepVanna and Chhay MengHou, were arrested and detained at the municipal police station after they came to Phnom Penh to deliver a petition to the Chinese Embassy. The petition concerned an ongoing land dispute between 1,000 families from Kiri Sakor district in Koh Kong and the Chinese Union Development Group Company. Thirty other villagers who came with the community reps were taken from their guesthouse, forced into buses and sent back home to Koh Kong.*
- *In May 2012 a 14-year old girl was shot dead during a land eviction operation by military and police forces in Broma Village, Kratie Province. No one has been held accountable by the end of 2012. NGOs criticized the investigation.<sup>104</sup>*
- *In April 2012 Railway community representative Ros Bopha fled her community after receiving death threats from the village chief and being threatened with arrest by local and regional authorities. In the past year, more than 160 families had been evicted as part of the railway rehabilitation project, which is co-funded by the Asian Development Bank (ADB). They were relocated to Trapeang Anh Chanh as part of a resettlement plan. The village chief led 30 to 40 villagers and security guards in a violent assault on the relocated families, using electric batons, knives and sticks. The village chief went to RosBopha's house with a gun, threatening to kill her, but she had hidden elsewhere.*
- *In May 2012 Community representative Kuch Veng was charged with incitement after leading fellow villagers in a bid to stop Pheapimex Company from clearing their farm land. Some 12,000 villagers are currently involved in land disputes over a Pheapimex economic land concession that spans more than 315,000 hectares in two provinces, Pursat and Kampong Chhnang. Eighteen villagers received court summons over the last year regarding complaints filed by Pheapimex for incitement, destruction of property and preventing development.*
- *In May 2012 thirteen women were arrested during a peaceful demonstration in support of 18 families of Boeung Kak's Village 1 whose homes have been destroyed and covered by sand. Military police, anti-riot intervention police and Daun Penh district security guards violently dispersed the initial demonstration. After two days of detention, all 13 women were charged, tried and convicted of illegal occupation of property and obstruction of public officials in one afternoon. They were sentenced to 2.5 years in prison after a trial filled with irregularities.*
  - *The land rights situation in Cambodia is increasingly desperate and, as a result, many freedom of expression cases involve the violation of the rights of activists to peacefully demonstrate and express their views. One prominent example of judicial harassment of land rights activists relates to a long-standing land dispute in Phnom Penh, between residents of Boeng Kak and private development company, Shukaku Inc.*

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<sup>104</sup> LICADHO: Licadho Calls for Investigation Into Deadly Kratie Shooting, Press Release 17.05.2012



*Shukaku Inc. is a private development company owned by CPP Senator Lao Meng Khin. On 24 May 2012, 13 female representatives of the evicted communities from Boeng Kak were charged, tried, sentenced and imprisoned over the course of a single day. They were eventually released on appeal on 27 July 2012 and their sentences reduced to the amount of time served, however the charges against them were upheld.<sup>44</sup>*

- *Judicial harassment has been used to intimidate human rights workers however most of cases were dropped. One example of this from 2012 is the case of Chan Soveth, deputy head of the investigation unit at the Cambodian Human Rights and Development Association (“ADHOC”) He was summonsed for questioning by the Phnom Penh Municipal Court on 24 August, relating to the humanitarian aid that he administered to a land rights activist who came to ADHOC’s central office in Phnom Penh. Another is the case of Ou Virak, President of CCHR who was summonsed to appear at the Ratanakkiri Provincial Court for questioning on potential charges of incitement to commit a crime. The complaint made against him was by a local CPP commune chief and related to a demonstration in 2009 by villagers embroiled in a land dispute with private company D.M. Group, which turned violent. Also summonsed at the time were Pen Bonnar and Chhay Thy, provincial coordinator of ADHOC and RFA journalist Ratha Visal. All above cases have since been dropped.*
- *In July 2012 a training session on land rights jointly organized by CCHR and ADHOC was disrupted by the authorities and police officers. Deputy Governor Nap Bun Heng attempted to justify the police action by stating that the organizers had failed to notify the authorities. However, under article 3 of the Law on Peaceful Assembly, organizers are exempted from notification requirements for all education dissemination activities for social interests.*
- *In September 2012 outspoken Boeung Kak Lake community representative Yorm Bopha was arrested and detained at Prey Sarprison after authorities claim she was involved in the beating of a suspected thief who had stolen wing mirrors from her car. She was charged with intentional violence with aggravating circumstances under Article 218 of the Penal Code. Bopha has been involved in numerous peaceful demonstrations since Shukaku Inc. began filling Boeung Kak Lake, evicting thousands of families from their homes.*
- *In September 2012 the day after Yorm Bopha’s arrest, authorities ordered the detention of Tim Sakmony, a prominent representative of evicted families from Borei Keila. She was accused of making a “false declaration” under article 633 of the Penal Code. The complaint against Sakmony was filed by Phanimex company owner Suy Sophan. Phanimex was awarded the Borei Keila community’s land in exchange for a promise to build ten apartment buildings for the community. The company decided, however, to build only eight buildings leading to the land dispute. Authorities claim that Sakmony made a “false declaration” to secure an apartment for her 49-year-old disabled son who is a resident of Borei Keila.*



- *In October 2012 three human rights NGO staff members and a RFA reporter were summoned by the deputy prosecutor at Ratanakiri Provincial Court to appear for questioning on charges of incitement to commit a crime. The charges were based on a complaint by CPP commune chief Kith Chem; authorities allege that the men incited members of the Tumpoun ethnic minority, who are involved in a land dispute with DM Group. A protest turned violent in 2009.<sup>105</sup>*

## 2.2.2 Public Political Discourse and the Freedom of Expression and Information

Current legal provisions and political practices by the CPP led RGC have continued to fail to ensure the freedom of expression and information. This has led to a general decline in political participation over the years up to 2012 causing a widely observed political resignation and an increasing political apathy among the Cambodian public. The CPP led RGC has not reacted effectively on violations of this essential rights in order to ensure the development of an open and plural political discourse, leaving some civil society organizations and human rights organizations to suspect the CPP led RGC to encourage such violations. It moreover strengthened in 2012 the perception among the Cambodian public that political participation by expressing political opinions and asking for public information implies the risk of possible economic and social or even legal repercussions. This led many Cambodian citizens to refrain from showing political interest or being political active. This trend was confirmed by a COMFREL's nationwide survey report 'Participation and Democratic Governance' conducted between June 2011 and January 2012 revealing that only 17.42 percent of eligible voters are interested in political affairs.<sup>106</sup> Recent voter turnouts in the commune council elections in June 2012 also confirm a sharp decrease in the voter turnout from 87 percent in 2002 to 65 percent in 2012.<sup>107</sup>

As in 2011 also the media continued to be extensively controlled and dominated by the CPP led RGC disadvantaging oppositional and dissenting voices limiting the development of a plural political discourse. The protection of the freedoms of expression and information has significantly worsened in 2012. A number of contentious cases were reported in demonstrating that the RGC makes no efforts to protect these freedoms. Examples below illustrate all media related freedom violations in 2012:

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<sup>105</sup> Ibid.

<sup>106</sup> COMFREL Survey Report 2013, p. 11

<sup>107</sup> COMFREL Final Report and Assessment of Commune Council Elections, p. 76

- *In June 2012 three radio broadcasters were prohibited to broadcast on the commune elections during Election Day. The local radio station Voice of Democracy (VOD) in Phnom Penh and Siem Reap were prohibited to broadcast until 3pm and five broadcast affiliates of Voice of America (VOA) and Radio Free Asia (RFA) were prohibited to broadcast for two days. Pro-government and state media were allowed to broadcast throughout the E-Day.*<sup>108</sup>
- *In June 2012 after three days returning from Switzerland and the USA, Mam Sonando, the owner and radio moderator of Beehive Radio Station was arrested. He was apprehended in relation to an arrest warrant issued by Kratie Provincial Court following a call for this arrest by Prime Minister Hun Sen in a public speech on 26<sup>th</sup> June 2012. Sonando faces several charges including ‘insurrectionary movement’ in Kratie province. Human rights organizations and other stakeholders including the EP have criticized his arrest and charges put forward.*<sup>109</sup>
- *In September 2012 a reporter for Virakchun Khmer Daily Newspaper was found dead in this car at a cashew plantation in the O’Chum O’Chum District of Ratanakkiri Province. Hang Serei Odom reported frequently on illegal logging activities in Ratanakkiri. A military police captain and his wife were charged and await trial.*<sup>110</sup>
- *In October 2012 the RGC invited journalists of the US funded radio stations Voice of America (VOA) and Radio Free Asia (RFA) to a closed-door meeting with cabinet ministers about their professionalism. VOA and RFA said to continue their professional broadcasts and let themselves not be intimidated by the RGC. Reporters without Borders and the Cambodian Center for Independent Media criticized the RGC for intimidation independent reporters.*<sup>111</sup>
- *In November 2012 the ‘Equity Weekly’s’ Program broadcasting every Sunday and set up by UNDP with TVK was suspended after the RGC had complaint about the content of “Show 260: Land Concession in Virachey National Park ‘Lakon Bassac’ aired on September 30. Reporters had unintentionally used archive footage from a wrong location. Till the now the very popular program has not resumed yet.*<sup>112</sup>
- *On 25 May 2012, the Supreme Court upheld the 2010 conviction of Leang Sokchouen, a LICADHO staff. Sokchouen was arbitrarily arrested for his alleged involvement in producing and distributing “anti-*

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<sup>108</sup> Southeast Asian Press Alliance (SEAPA): Cambodian Governments Bans Independent Radio Stations From Election Coverage, 09.06.2012

<sup>109</sup> Cambodian Human Rights Portal, [www.sithi.org](http://www.sithi.org); the EP Resolution (2012/2844(RSP)) ‘calls for an immediate and unconditional release of Mom Sonando and other government critics and land rights activists who are being held for political reasons only’

<sup>110</sup> The Cambodia Daily: Journalist Murdered in Ratanakkiri, 12.09.2012

<sup>111</sup> Reporters without Borders, Cambodian Center for Independent Media (CCIM): Government Tries To Intimidate Radio Free Asia and Voice of America, 17.10.2012

<sup>112</sup> Cambodia Daily: TV Program Halted After Government Criticism, 09.12.2012

government” leaflets in Takeo province in 2010. He was convicted after an unfair trial and sentenced to two years’ in prison and a two million riel fine (US\$500) on disinformation. The prosecution failed to present any in-court witness testimony or credible evidence. The judgement appeared to be based entirely on written statements prepared by the police.<sup>113</sup>

- In January 2013 a seven years jail sentence against a French journalist was upheld by a Phnom Penh court in absentia of the accused for procuring prostitution after conducting investigations into Cambodia’s sex trade. Reporters without Borders, the French Government and human rights organizations consider the case political motivated. The RGC rejected interference into the judiciary on grounds that the RGC cannot obstruct the judiciary, who supposed to be independent.<sup>114</sup>

Consequently Cambodia has fallen to its lowest rank in terms of press freedom since 2002 according to the repudiated and well known media organization ‘Reporters without Borders’. In its recently released Press Freedom Index 2013 (PFI) Cambodia was ranked only on the 143th place from falling 26 places within one year from previously place 117. The report also state that ‘authoritarianism and censorship are on the increase in Cambodia’<sup>115</sup>. Only Vietnam, Laos and Malaysia fell behind Cambodia in the index.<sup>116</sup> Likewise the CPP continued to control and own most TV and radio stations in Cambodia with the few exceptions of some independent national and international radio stations. To this day no regulatory framework is in place which can accurately ensure the freedoms of expression and information, leaving a grey area for uneven media coverage in favor of the CPP.<sup>117</sup>

Different is only the situation for digitalized media as already outlined. They have to some extent created a counter-public to the current dominant position of the CPP in the Cambodian public. Online news, social networks and personal blogs, used through fixed internet lines or mobile connections via iPads and mobile phones, enjoy at present more freedoms than other media outlets. To this day the RGC had made no attempts to censor digitalized media.<sup>118</sup> Also in 2012 COMFREL observed no censorship of digitalized media. Digitalized media however play currently only a minor role in

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<sup>113</sup> LICADHO: Supreme Court Holds Up Baseless Conviction of LICADHO Staff, 25.05.2012

<sup>114</sup> Phnom Penh Post: France Pushes Hun Sen on Human Rights Record, 07.02.2012 and Government Rejects France’s Concern, 08.02.2013; Journalist’s Sex Trafficking Sentence Draws Ire, 31.01.2013, [www.phnompenhpost.com](http://www.phnompenhpost.com); Reporters without Borders: Convicted in Absentia – Call For Withdrawal of Interpol ‘Red Notice’ Against French Journalist, 01.02.2013; Cambodian Human Rights Portal, [www.sithi.org](http://www.sithi.org)

<sup>115</sup> Reporters without Borders: Press Freedom Index 2013, [en.rsf.org](http://en.rsf.org)

<sup>116</sup> Cambodia Daily: Censorship Rising as Cambodia Slips Down Press Freedom Index, 01.02.2013

<sup>117</sup> see demands for a law on access to public information on p. 21 and for the CPP media dominance, p. 26 in this report

<sup>118</sup> In 2011 the RGC made attempts to block some government critical webpages, see COMFREL Annual Report ‘Democracy, Election and Reform 2012’, [www.comfrel.org](http://www.comfrel.org)

Cambodia's public political discourses dominated by TV and radio stations.<sup>119</sup> This probably explains why the CPP led RGC demonstrates a more liberal attitude towards digitalized media, while more rigid policies are adapted in other media outlets. Only a minority of the Cambodians use the internet, though the number of internet uses is increasing. According to the Ministry of Telecommunication 2,5 million Cambodians already used the internet in 2012 (17,5 percent of the population) and further increases are expected.<sup>120</sup> The RGC announced in May 2012 to work on a draft for a cyber-law with the aim 'to protect the common interest'<sup>121</sup>. The proposed law is feared by some stakeholders to be a tool for new censorship. The law is currently in preparatory stage.

To some controversy led in January 2013 also a proposal by Prime Minister Hun Sen to implement a law for the use of proper language in political discourses ahead of the National Assembly elections. The new law shall prohibit personal insults on politicians. Considering that current political discourses are often characterized by inaccuracy, personal insults and defamatory language against political opponents either on the side of the government or the opposition, a debate about the ethics of language in political discourses can be understand as a contribution to more constructive political debates. However, some stakeholders have been skeptical to critical, fearing that the proposal could be one-sided and another instrument of censorship targeting mainly oppositional and dissenting voices.<sup>122</sup>

### 3. Elections in 2012 and Prospects for Upcoming Election

Elections seem currently the only effective mean to pressure the RGC for reforms as observed in 2012. Positively the RGCs continues to share funds of more than 70% of the NEC proposed budget ( around US\$20 millions) for carrying out elections at national and local level and implementing election laws. In 2012 two elections were held, including in January 2012 indirect elections for the Cambodian Senate, the second chamber of the Cambodian Parliament and in June 2012 commune council elections. In July 2013 National Assembly elections will be held for the fifth legislature since 1993. COMFREL found however that the commune council elections were only limited free and made no improvements in

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<sup>119</sup> COMFREL found in its Survey Report on Voter Registration and Audit of Voter List 2012, that 76 percent of Cambodian citizens receive electoral information from village chiefs, 38 percent from TV, 35 percent from radio, 23 percent from local authorities, 19 percent from public loudspeakers and 19 percent from neighbors.

<sup>120</sup> Phnom Penh Post: Fixed Internet-Line Providers See Growth, 07.01.2013

<sup>121</sup> CCHR: Cambodian Government Is Drafting First Ever Cyber Law, 24.05.2012

<sup>122</sup> Phnom Penh Post: Let's Keep The Language Civil, 17.01.2013; Cambodia Daily: Hun Sen Calls for Law to Stop Personal Insults, 16.01.2013

terms of fairness. Also the elections to the Cambodian Senate, which is indirectly elected by commune councilors and the National Assembly, brought the predicted election results, though with gains for the SRP, but the current election system for the senate cannot advance the democratization process.

Cambodia adapts for elections in general a proportional election system on national and local level. In nine of the 24 provinces however a plurality system is adapted for the NA election, because only one seat can be gained. In 2012 no reforms were made or announced by the RGC to improve the current election system despite domestic and international pressures over the past years for reform. Those reform proposals include changes of provisions regulating the composition of the National Election Commission (NEC) and subordinated electoral commissions on provincial, communal and local level, an increase of NA seats because of changes in the population size of electoral constituencies, a reform of the senate election system and changes of the electoral law towards a more coherent and comprehensive legal framework.<sup>123</sup> The RGC however have resisted any attempts of electoral reform and recently announced to not change the current provisions regulating the NEC composition and not to increase the number of NA seats. The lack of commitment for reforms of the election system has antagonized the opposition, who first considered boycotting the National Assembly election 2013.<sup>124</sup>

### 3.1 Senate Election 2012

The senate elections in January 2012 brought changes in the composition of the senate. In 2007 three parties, the CPP, SRP and FUNCINPEC were represented in the senate, since 2012 only two parties, the CPP and SRP are represented. FUNCINPEC had not regained enough commune councillor seats in 2012 the nine senate seats held went to the SRP, who is now represented with eleven senators, whereas the CPP hold the remaining 43 seats in the second chamber of the Cambodian parliament.<sup>125</sup>

The senate elections can be considered as a significant political gain for the SRP. However the current Cambodian Senate has only review and initiative power in the legislative process and remains therefore political far less influential than the first chamber of the Cambodian parliament, the National Assembly. Also the current election system of indirect elections in six years intervals is ambiguous regarding that

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<sup>123</sup> COMFREL Annual Report Democracy, Election and Reform 2011, February 2012, [www.comfrel.org](http://www.comfrel.org), p. 13-14

<sup>124</sup> Voice of America (VOA): Opposition Considers Boycott of National Elections, 25.09.2012

<sup>125</sup> NEC: Official Results for Senate Election, 3<sup>rd</sup> Mandate, On Sunday January 29, 2012

not only commune councillors vote for the senate but also all elected members of the National Assembly, whereas two senators are appointed by the King. This leaves the question open, if the Cambodian Senate should now represent the federal interests in the second chamber represented by the votes of the commune councillors or the national interest represented by the votes of members of the National Assembly. Originally a unicameral parliament was established in 1993, before in 1999 a constitutional amendment added a second chamber to the Cambodian parliament. The purpose and role of this chamber in the political process remain to this day open, except that the chamber can initiate and review law in order to improve the quality of the policy-making process.<sup>126</sup> However a genuine representative function is not given with the current election system in place and the current Cambodian Senate lacks substantial scrutiny powers to counterbalance executive powers.<sup>127</sup>

### 3.2 Commune Council Election 2012

The election results of the commune council elections in June 2012 confirmed the CPP dominance. Despite growing social tensions as explained in this report, only 41 of the total 1,633 commune chief seats were won by other political parties than the CPP. This includes the opposition Sam Rainsy Party (SRP) who gained 22 commune chief seats, the Human Rights Party (HRP), who won eighteen commune chief posts and the FUNCINPEC, who won one commune chief post. None of the other contesting parties won a commune chief post, despite that total ten political parties contested for this election. This included the Norodom Ranariddh Party (NRP), the Cambodian Nationality's Party (CNP), the League for Democracy Party, the Khmer Anti-Poverty Party (KAPP), the Democratic Movement Party (DMP) and the Republican Democratic Party (RDP). The CPP won in total 39 percent of the votes and gained 8,292 councilors based on the calculation of the share of votes of all registered voters. The SRP and HRP gained together nineteen percent of votes and 2,955 councilors. The FUNCINPEC and NRP gained only two percent of the vote each and 151 councilors and 52 councilors. The LDP and CNP won with one percent of the vote total ten council seats.<sup>128</sup>

Most electoral gains were made by the CPP, whereas other political parties lost on political support with the exception of the HRP. The CPP won total 3,631,082 votes. This is an increase of 482,549 votes to

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<sup>126</sup> Hor, Peng, p. 56

<sup>127</sup> COMFREL Parliamentary Watch 2012 (Final Results)

<sup>128</sup> COMFREL: Final Assessment and Report on Commune Council Elections 2012, [www.comfrel.org](http://www.comfrel.org), p. 76



the commune council elections in 2007, when the CPP gained 3,148,533 votes. However the CPP did fail to gain an absolute majority of votes, because votes were lost to the opposition and to the 3,209,501 voters (35%), who did not cast their votes. The HRP gained total 580,483 of the votes (10%), which is an increase of 182, 667 votes in comparison to the parliamentary election 2008. Also the SRP could hold its position, though lost 79,446 votes which probably went to HRP. The SRP won in total 1,224,460 votes (22%). FUNCINPEC and NRP in contrary had to accept significant losses explaining partly the increase in votes for the CPP. FUNCINPEC gained in 2012 only total 222,671 votes (4%) which is a loss of 54,874 votes in comparison to the commune election 2007. The NRP gained only 170,962 votes (3%) losing 248,829 votes in comparison to 2007.<sup>129</sup>

The conduct of the commune council elections revealed however like previous elections that persistent irregularities and weaknesses of the current election system in place reoccurred, giving the CPP a distinctive advantage to other political parties and is one of the factors explaining why the CPP remained dominant in the election. COMFREL concluded in its 'Final Report and Assessment of the Commune Council Elections 2012'<sup>130</sup>, that the commune council elections were only 'limited free' and showed 'no improvement in terms of fairness'. Major weaknesses in the conduct of free and fair elections persisted in the voter registration, the candidate registration, a continuing lack of confidence in the election administration, a continuing unequal level field for political competition underlined by the CPP media dominance and the use of state resources for CPP purposes and partly in an electoral atmosphere of intimidation and fear which was observed by COMFREL in some communes.<sup>131</sup>

An important factor explaining the difficulties of other political parties to challenge the CPP are current restrictive regulations for the registration of candidates. Current provisions require political parties to nominate for each candidate a reserve candidate. The range of contested seats per commune is five to eleven. This means in some communes political parties had to register up to 22 candidates. If any political party did not meet the required number of candidates, the law stipulates that all candidates of this party must be rejected. Consequently a remarkable high number of 223 communes out of total 1.633 communes were only contested by the CPP, who succeeded to recruit enough candidates. Already in 2002 COMFREL observed that 148 communes were uncontested. This number further increased to

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<sup>129</sup> Ibid.

<sup>130</sup> COMFREL: Final Report and Assessment of the Commune Council Elections on 6<sup>th</sup> June 2012, [www.comfrel.org](http://www.comfrel.org)

<sup>131</sup> COMFREL Election Watch 2012 (Final Results)



166 uncontested communes in 2007 raising the question how free and fair election can be, when they lack political competition. Also independent candidates are not allowed.<sup>132</sup>

Likewise the election campaign continued to be dominated by the CPP like in previous elections. Current campaign provisions and principles of the National Election Committee (NEC) could not ensure an equitable level-playing field for all political parties. Numerous incidents of vote-buying were observed. Until today no effective control of campaign finance has been put in place leaving other parties than the CPP in jeopardy. Parts of the state administration including police and military forces conducted campaigns in favour of CPP despite current laws prohibiting officials' involvement in party activities. State vehicles were misused for CPP campaigns and the media remained widely biased.<sup>133</sup> COMFREL also observed that the CPP spent disproportional more financial resources than any other political party on the election campaign for this election. Due to the lack of a campaign finance law, the CPP could spend an unlimited amount. According to observations of COMFREL, the CPP spent about 9,000USD per commune/ sangkat campaign, the SRP about 1,500USD per commune/sangkat campaign, the Human Rights Party (HRP) about 300USD, the Norodom Ranariddh Party (NRP) about 200USD and the FUNCINPEC less than 200USD per commune/sangkat campaign.<sup>134</sup>

Positively no severe technical irregularities during polling and counting have been observed who would prove an obstruction of the electoral process putting the election results into question. Also positively was observed that the number of elected women councillors increased to eighteen percent in comparison to previous elections. The number of women councillors however has not reached the Cambodian Millennium Development Goal's 2015 target of 25 percent representation in political offices at commune level. Currently 2,038 (18%) of the 11,459 councillors are woman, as compared with 1,662 (15%) of the 11,353 councillors in 2007 and 920 (8%) of the 11,261 councillors in 2002. 95 women were elected as commune chiefs in 2012, compared to 67 in 2007 and 34 in 2002.<sup>135</sup>

### 3.3 Reform and Preparation for the National Assembly Election 2013

The National Assembly election for the fifth legislature will be held on 28<sup>th</sup> July 2013. Despite domestic and international pressures to reform the election system neither substantial reform were made nor

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<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

existing laws implemented properly. Among reform proposals of the European Union in 2008<sup>136</sup>, most recent reform proposals and key recommendations for the upcoming national elections were made by the UN Special Rapporteur for Human Rights in Cambodia, Mr. Surya Subedi as outlined below:<sup>137</sup>

1. *The National Election Committee (NEC) should be reformed so as to have independent and autonomous status. There should be consensus among the major political parties represented in the parliament on the appointment of the president and members of the NEC and the provincial election committees (PECs). Within the composition of election bodies of all levels, there should be balanced representation of all political parties with representation in the National Assembly.*
2. *All major political parties should have fair and equal access to the mass media to convey their messages to the electorate. The way forward could be to establish an independent committee on the management and use of State-run television and radio stations.*
3. *The Government must ensure that all civil servants, police and military personnel do not participate in political activities or use Government resources while working in their official capacities.*
4. *Regarding the registration of voters the Government should expeditiously provide necessary documents, Khmer nationality identity cards, passports and other necessary civil registration documents to all citizens for nominal fees and should reregister voters using the data from those cards as a basis to establish a new electoral roll.*
5. *Any Cambodian citizen eligible to vote should be entitled to request registration with the electoral and/or local authorities at any point during the year. Once he or she is issued with an identification card, that card should be valid for life.*
6. *The current law, which requires a person to be nominated to stand for election by a political party, should be amended to make it possible for independent candidates to stand in the national elections.*
7. *Regarding the situation of Sam Rainsy, the leader of the Sam Rainsy Party, who has been convicted on charges that are allegedly politically motivated, a political solution should be found to enable him, as the leader of the opposition, to play a full role in Cambodian politics.*

Key reform proposals however continue to be widely ignored by the RGC including the restructuring of the election administration on national, provincial and communal level in order to reach a proportional representation of all political parties in the election administration, reforms of current ineffective election dispute mechanisms, reform of unequal and controlled access to media and reforms of the voter registration and voter list. Also appeals by parts of the international community and domestic stakeholders to let the leader of the largest opposition party, Sam Rainsy return to the country in order to participate in the upcoming elections were so far ignored raising concerns of possible unrest during the upcoming elections.<sup>138</sup>

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<sup>136</sup> European Union Election Observer Mission to Cambodia: Final Report - National Assembly Elections, July 2008, p. 45

<sup>137</sup> UN Report of the Special Rapporteur for Human Rights in Cambodia, A/HRC/21/63, 16.07.2012

<sup>138</sup> Radio Free Asia: Warning of Return to Violence, 28.08.2012, [www.rfa.org](http://www.rfa.org)

Though the composition of the election administration has changed on national level in 2012, the appointment of two new committee members brought no proportional representation of all political parties represented in the NA. Two new members of the NEC were changed and selected to the committee while the other seven members the same. This brings the total number to nine. The recruitment and selection of these members by the government was not open, and did not involve the HRP and SRP. In October 2012 the National Assembly endorsed all members of the National Election Committee, despite a boycott of the special session by members of two opposition parties. Opposition officials argue the NEC continues to favour the ruling party.

Appeals by international and national stakeholders to find a consensus among all political parties for the recruitment of election officials on national, provincial and commune level failed. Officials of the opposition parties HRP and SRP continue to suspect that the NEC will favour the CPP in the upcoming national election.<sup>139</sup> Further tensions caused the deletion of Sam Rainsy from the voter list. A deletion not covered by law increasing suspicions that the NEC indeed will favour the CPP in the National Assembly election.<sup>140</sup>

The electoral preparations for the National Assembly elections have begun in the months of September and December 2012 to update and correct the voter lists. The NEC has implemented positively a recommendation on voter registration system calling on the NEC to employ computer technology to verify and record voters' identities and IDs in order to improve the accuracy of the voter list. According to the observation report of COMFREL, as of the end of September 2012 around 800 computers with internet connection had been set up by NEC in 300 communes.<sup>141</sup> Concerns over the accuracy of the voter list have decreased in 2012. Political parties have not send monitors for the voter registration exercise. However the SRP and HRP have recently disputed the current voter list, claiming that the number of registered voters cannot be correct and is inflated with 'ghost voters' in order to ensure the CPP will win the election.<sup>142</sup> COMFREL found no evidence for these claims, though discrepancies in the number of registered voters in 2012 published by the National Election Commission (NEC) show that the persistent weaknesses of the current voter registration are not overcome and need urgently to be

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<sup>139</sup> COMFREL Election Watch 2012 (Final Results)

<sup>140</sup> Cambodia Daily: Sam Rainsy Deleted from Voter List for Election, 05.11.2012

<sup>141</sup> Ibid.

<sup>142</sup> Cambodian National Rescue Party (CNRP): Manipulation of Voter List in Order to Inflate Votes, 22.01.2013, [www.nationalrescueparty.org](http://www.nationalrescueparty.org), retrieved on 09.02.2013

reformed. It can already be predicted that claims for voter lists manipulation by oppositional parties will likely increase in coming months.<sup>143</sup>

For example the NEC has registered 9.7 percent new voters, COMFREL found in its own calculation only an increase of 4.4. The current registration system does also not ensure for all Cambodian citizens the right to vote. In 2012 the NEC succeeded not yet to register all eligible voters, but 97.7 percent. Likewise registration projections of the NEC that 9,509,732 voters will be registered were higher after the final validating and public announcement of the official voter list in December with 9,675,403 registered voters. This exceeds the projected number of 619,630 new voters with now 940,445 newly registered voters. COMFREL found also that currently it is not transparent how many new youth voters were registered, just coming into voting age and how many voters, who have migrated have been registered. Would these voters be listed separately on voter lists, transparency could increase leaving less space for political agitation.<sup>144</sup> The NEC has confirmed these concerns by stating: ‘From year to year, the number of ‘Ghost names’ (name of voters registered more than one time and deceased voters) were accumulated since 2001, which make the voter list inflated in numbers because NEC was not able to legally delete those names. Unfortunately this challenge remains difficult to overcome.’<sup>145</sup> Technical reasons given by the NEC are the increasing mobility of voters leading to new registrations, whereas voters in previous locations have not been accurately deleted over past years. Remarkable is that the NEC confirms in this published statement that voter names cannot be deleted, but has done so in the case of Sam Rainsy indicating undue political pressure on the NEC.<sup>146</sup>

COMFREL identified a pattern for the possible electoral outcome for the upcoming National Assembly based on the past commune council elections in 2012 and NA elections in 2008 that the CPP most likely will hold its dominant position. However the current unresolved disputes surrounding the prosecution of Sam Rainsy, the leader of the largest oppositional party, which now have merged with the HRP, could lead to a heavily contested election on the condition that the elections can be conducted in a free and fair manner. The increase in social tensions as examined in this report, might lead to gains for the

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<sup>143</sup> COMFREL Election Watch 2012 (Final Results)

<sup>144</sup> Ibid.

<sup>145</sup> National Election Commission (NEC): NEC’s International Communities Meeting on the Annual Revision of Voter’s Lists & Voter Registration, September 26, 2012, [www.ncelect.org.kh](http://www.ncelect.org.kh), p. 2

<sup>146</sup> COMFREL Election Watch 2012 (Final Results)

opposition. Considered can be also that the CPP led RGC has not an absolute majority support of voters as reflected in the election results of the past commune and National Assembly elections.<sup>147</sup>

On the other hand the current party merger of the SRP and HRP to win the NA elections might break up after elections leading to coalitions with the CPP or to new party splits within the currently formed CNRP. Possible political differences between the two opposition parties might also be a constraint for a permanent political alliance. The SRP and HRP defer in their political platforms, though they are united in their opposition against the CPP. Moreover conflicts between opposition parties have been observed in the past.<sup>148</sup> This includes particularly the political factionalism observed between SRP and FUNCINPEC in the years 1998 and 2003 before and after elections and in past years observed conflicts within opposition parties including the SRP, NP, HRP and FUNCINPEC. Often this has led to defections between those parties but also to defections to the CPP in 2008 and in 2012.<sup>149</sup>

Likewise, although the FUNCINPEC might be seen as a political alternative to the CPP and the CNRP considering that King Father Norodom Sihanouk has passed and the mourning ceremony demonstrated the popularity of the monarchic tradition, it remains questionable how united the current FUNCINPEC is, despite that the NP has successfully merged with the FUNCINPEC in 2012 allowing a more effective election campaign for the upcoming elections. To consider is also that the current party leader of FUNCINPEC, the youngest daughter of King Father Norodom Sihanouk, Princess Arun Rasmeay had not gained significant electoral support in the National Assembly Elections in 2008 despite her reputation as the King's daughter and first women to run for the office of prime minister in Cambodia.<sup>150</sup> Currently FUNCINPEC and the Nationalist Party (NP) hold only two seats each in the National Assembly and lost significantly votes in the commune council elections 2012.<sup>151</sup>

Current debated political platforms of the CPP, CNRP and FUNCINPEC in the beginning months of 2013 indicate nonetheless prospects for some competition in the election, here especially between the CPP and CNRP. The CPP advocates old political platforms with a new approach of implementation

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<sup>147</sup> see COMFREL: Final Report and Assessment of the Commune Council Elections 2012, [www.comfrel.org](http://www.comfrel.org)

<sup>148</sup> COMFREL Annual Report Democracy, Election and Reform 2011, [www.comfrel.org](http://www.comfrel.org)

<sup>149</sup> see for example Un Kheang: Cambodia's 2008 Election: The End of Opposition?, Ed. Open Democracy Network, 05.08.2012, [www.opendemocracy.net](http://www.opendemocracy.net); or recent defections of SRP members to the CPP, see p. 24 of this report

<sup>150</sup> Phnom Penh Post: King Father's Daughter Chosen To Lead Royalist Party, 28.01.2013

<sup>151</sup> COMFREL: Final Report and Assessment of the National Assembly Elections 2008, [www.comfrel.org](http://www.comfrel.org); COMFREL: Final Report and Assessment of the Commune Council Elections 2012, [www.comfrel.org](http://www.comfrel.org)

while currently maintaining a form of neo-patrimonialism linking the RGC closely to economic elites of its political party affiliation to sustain the current achieved stability of the political system through incentives and promotions for opponents, whereas these policies are accompanied by neo-liberal economic policies advocating a limited state concentrated on ‘law and order’ to adapt to the international market on which Cambodia’s economic growth solely depends and recently, to advocate the Chinese development strategy. Social policies are not directly advocated despite the current massive increase in social challenges. Instead CPP continue to remind the Cambodian public that an electoral defeat of the CPP in 2013 would lead to political instability. This scenario is unfortunately of severe concern considering that the current system of patrimonialism, nepotism and control of armed forces and court officials would fall apart, if the CPP were to lose the upcoming elections.

The CNRP counters the CPP platforms with a social-democratic outlook emphasizing to extend state capabilities to improve public health and education services, increase salaries for civil servants, police and military personnel, establish a public retirement system and advertise a social land concession scheme contrasting the current economic land concession scheme of the CPP. In addition the CNRP continues its long held fundamental criticism of the CPP for past injustices and allege the party to be closely related with the Communist Parties of Vietnam and China. The FUNCINPEC in contrary offers the Cambodian electorate the monarchic tradition. The party is hoping that with reference to the youngest daughter of King Father Norodom Sihanouk voters can be mobilized. The party however lacks a comprehensive political platform providing policy alternatives like CPP and CNRP.<sup>152</sup>

## IV. Recommendations

After the 2013 election the new RGC should foster institutional and procedural reforms to effectively enforce current constitutional provisions requiring an effective and efficient separation of powers. Current fusions of powers between the executive, legislative and judiciary need to be overcome. An inclusive political process involving the legislative, executive and judiciary in the policy-making process should be fostered in order to consolidate a parliamentary system based on the principles of a liberal democracy.

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<sup>152</sup> COMFREL Election Watch Final Results (2012)

The new National Assembly should be strengthened and opposition parties have more involvement in the policy-making process. The current development of the multi-party system towards a one-party system should be immediately stopped with reforms put in place to strengthen of the party system by providing public finance and training to political parties and legal changes allowing independent candidates to run for elections. Additionally political parties should gain privileged and proportional access to all electronic media in Cambodia.

The new RGC should strengthen efforts to increase transparency, accountability and responsiveness of the executive. Some progress was made, but the reforms lay behind the expectations including the adaption of a law ensuring access to public information and more effective public social policies. The new RGC should begin to publically demonstrate a continuously an explicit commitment to democracy and human rights and become more open and liberal in political discourses on issues of public concern by ensuring a more inclusive political process including the opposition and dissenting members of the civil society. The Cambodian public should be encouraged to participate in the political process by fostering education on the parliamentary government system and elections.

Current legal provisions affecting the freedom of assembly and freedom of expression should be interpreted more liberal refraining from restrictive measures against dissenting opinions in order to encourage more political participation of the Cambodian public in public political discourses and to contain the

Current imprisoned civil society, community and political activists should be amnestied signalling a change towards a more liberal political attitude of the RGC.

Civil servants, police and military personnel should be discouraged from carrying out any political party activities. The public administration including armed forces should be neutralized and the recruitment of new personnel should be based on merit and not political party affiliation. Laws regulating the conduct of public officials need to be more effectively implemented in order to prevent misuse of authority positions as observed in 2012 during labour and land conflicts. Private body guards should be limited and the police forces in Cambodia modernized and trained to properly handle public demonstrations, protests and strikes.



Electoral reforms should be emphasized ahead of the National Assembly election. Civil society stakeholders should have more involvement and a possible consensus should be reached with main political parties (who have seats in national assembly) to find alternative recommendations on election reform in order to strengthen confidence on the current composition of the election administration of provincial and local levels and strengthen confidence in their performance. Advocacy/ lobby and election campaign activities should be more rigorously observed to improve the NEC regulations, prevent vote-buying, misconduct by public officials and security forces and increase more transparency on polling and counting. Campaign finances should be publicly disclosed and the misuse of state resources for party purposes rigorously prohibited on a permanent base.

Improvements in the field of press freedom need to be emphasized considering that Cambodia has lost its rank in the Press Freedom Index in 2012. The Ministry of Information should refrain from interference in media companies, who broadcast or report critical about RGC public policies, while pro-government media are handled more liberal. Opposition and pro-government media should become more balanced in their broadcast following more rigorously a strict ethical conduct. All media should be obliged by law to provide a balanced coverage on political discourses and political parties.

Political parties should foster a reconciliation process ending the political polarizations between the CPP and SRP in order to establish a genuine political competition about different public policies and competencies refraining from public discourses of the past which do not foster reconciliation. The different policies and approaches can be debated during election campaign. The candidates for prime minister should directly engage in the debate.

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