

THE 2011 REPORT

DEMOCRACY, ELECTION AND REFORM IN CAMBODIA

February 2012



COMFREL

Cover –picture : Participants taking part in a Voter Voice Workshop on Determining Priority Needs in Remote Area at Tbeng commune, Banteay Srey district, Siem Reap province. The workshop was conducted by Committee for Free and Fair Elections in Cambodia (COMFREL) on November 23, 2011.

2011 Report on Democracy, Election and Reform In Cambodia

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COMFREL

Committee for Free and Fair Elections in Cambodia

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Acronyms

ADHOC	Cambodian Association for Development and Human Rights
CAS	Center for Advanced Studies
CCHR	Cambodian Center for Human Rights
CLEC	Community Legal Education Center
COMFREL	Committee for Free and Fair Elections in Cambodia
CPP	Cambodian People's Party
EUEOM	European Election Observer Mission
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia
GII	Gender Inequality Index
HDDM	Hang Dara Democratic Movement Party
HRP	Human Rights Party
ICCPR	International Covenant on Civic and Political Rights
IDUF	Independent and Democratic Union Federation
LEMNA	Law on Elections of Members of the National Assembly
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
Mol	Ministry of Interior
MPs	Members of Parliament
NDI	National Democratic Institute
NEC	National Election Committee
NICFEC	Neutral and Impartial Committee for Free and Fair Elections in Cambodia
NRP	Norodom Ranariddh Party
OBI	Open Budget Index
RGC	Royal Government of Cambodia
SNCC	Supreme National Council against Corruption
SRP	Sam Rainsy Party
STT	NGO Sahmakum Teang Tnaut
UNDP	United Nations Development Program
UNHCHR	United Nations High Commissioner for Human Rights
UNTAC	United Nations Transitional Authority in Cambodia

1. Introduction

COMFREL continues its reports on ‘Democracy, Elections and Reform’, which assesses the annual state of democracy in Cambodia.¹ The annual report takes a comparative approach in asking, what changed in comparison to previous years? Did the political system of Cambodia progress toward a consolidated democracy or is stagnation or even a regression observable, which put the democratization process into question? The assessment of the democratization process is based on the findings of the COMFREL Monitoring Units ‘Government Watch’, ‘Parliamentary Watch’, ‘Media Watch’, ‘Election Watch’, and ‘Gender Watch’. Beside primary observations, secondary sources of different national and international stakeholders and media have been included in the report to ensure a comprehensive assessment of the democratization process in 2011. All sources used are specified in footnotes including the observations of COMFREL. This shall ensure accuracy, reliability and verifiability of the observation results and evaluation.

COMFREL is guided in its analysis by international and national standards for democracy, norms and laws of the United Nations, Cambodian laws and reform plans of the Royal Government of Cambodia. For the following analysis of the democratization process, democracy indicators have been developed. They include the indicators ‘democratic governance’ based on the principle of separation and limitations of power, ‘democratic elections’ based on the principle of genuine elections, ‘democratic competition’ based on the principal of a level-playing field for political competition and ‘democratic participation’ based on the principle of political freedoms which include the freedoms of expression, assembly and association. The democracy indicators are explained in each related chapter.

Accordingly the report first analyzes the state of democratic governance on the base of the principle of separation and limitations of power. This analysis includes parliamentarianism, the rule of law and government accountability and transparency. Afterwards follows an analysis of the state of democratic elections. Since in 2012 no elections were held, the report concentrates on potential electoral reforms, the annual voter registration and prospects for the senate elections in 2012. Thereafter follows an analysis of the state of democratic competition in Cambodia. In this part will be assessed, if there is an equitable access to media and state resources for all political parties. Moreover the analysis will look into the role of the political discourse in 2011 for the democratization process. This follows an assessment of the state of democratic participation including an assessment of the freedoms of expression, assembly and association. Special focus will be given to the role of women in the democratization process. Moreover results of a COMFEL survey concerning citizen’s political participation will be analyzed. The report concludes with recommendations and perspectives to the question how democratization can be further advanced and sustained in future.

¹ See previous annual COMFREL reports: Democracy, Elections and Reform, Phnom Penh 2009 and 2010, www.comfrel.org

II. The Democratization Process in 2011

1. Democratic Governance

Democratic governance is defined by the principle of separation and limitations of power which includes that governments are accountable and transparent towards citizens. Separation and limitations of power means that none of the three government branches (executive, legislative and judiciary) can dominate the other and that no government branches can make decisions on their own. The principle assumes when each government branch is controlled and needs the approval for policies by the other government branch, the prevention of power misuse and the accountability and transparency of governance for citizens is guaranteed. This principle is often referred to as ‘checks and balances’ in description of democratic government systems. The Royal Government of Cambodia has explicitly committed itself to the principle of separation and limitations of power. The Cambodian Constitution stipulates that ‘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,) and that ‘no organ of the legislative power or of the executive power can exercise any judicial power’ (Article 130). Moreover the constitution limits power in stating, ‘the judicial power is guarantor of impartiality and the protector of the citizens’ rights and liberties’ (Article 128).

Accordingly all three government branches were analyzed on the base of this principle. Does the Royal Government of Cambodia comply with this principle or is political reform needed? COMFREL finds hereby that a lack of democratic governance continued also in 2011 to remain a major obstacle for advances in the democratization process. The executive continued to dominate the other government branches. The legislative and judiciary lacked independency and power to act as ‘checks and balances’ of the executive. The legislative continued to not function properly because of restrictive procedural rules and a lack of resources. Moreover the legislative power remained constrained because of sincere tensions between the main opposition party, Sam Rainsy Party (SRP) and the ruling government party, Cambodian People’s Party (CPP). Similarly weak remain the position of the judiciary. Substantial judicial reforms have not yet been implemented. A lack of a due process of law and proper law enforcement continue to remain a major weakness of the judiciary in 2011. Likewise reforms to improve the transparency and accountability of government policies remained limited.

1.1 The Legislative: Parliamentarianism

The situation of the Cambodian legislative has worsened in 2011 in comparison to observations of COMFREL made in 2010. Cambodia’s political system is a parliamentary government system, where the separation of the legislative and executive is only guaranteed with a proper functioning of the parliament including a strong opposition. This is especially important in the current situation. Since the parliamentary elections in 2008 the ruling Cambodian People’s Party (CPP) has gained a two-third majority in parliament. This allows the CPP de facto to approve any law initiated by its own government without considering the opposition. The opposition however still can control in this sit-

uation the legislation through deliberation, scrutiny and representation. However, the Cambodian legislative was considerably weakened in these powers in 2011 because of sincere tensions between the government and the opposition. Moreover the legislative has continued to not function properly because of a persistent lack of deliberation and scrutiny within the legislative bodies, a persistent lack of representation of the opposition and citizens within the plenary body and a lack of material resources for the legislative. These factors have considerably undermined the legislative power.

Specifically problematic is that the Sam Rainsy Party (SRP), which is the strongest opposition party with 26 parliamentary seats, has been widely excluded from parliament work in 2011. Sincere political tensions between the SRP and CPP had led to the expulsion of SRP party leader Sam Rainsy from parliament and the stripping of his immunity. Sam Rainsy could not retain his parliamentary seat in 2011 after his conviction was upheld by the Supreme Court of Cambodia in March 2011. He had been convicted for public forgery and disinformation, racial incitement and vandalism in 2009. Sam Rainsy will not be able to participate in the parliamentary elections 2013 except he is pardoned by King Norodom Sihamoni.² Moreover two other SRP MPs lost their parliamentary immunity. SRP MP Mu Sochua lost her immunity in 2010 after she was convicted for defamation of Prime Minister Hun Sen in 2009. Her parliamentary immunity has not been restored in 2011. A request in April 2011 to restore her immunity was rejected by National Assembly President Heng Samrin, who said she has to be rehabilitated by the court first. According to the Ministry of Justice, Mu Sochua could remain without parliamentary immunity for five years. This would mean she also cannot participate in the parliamentary elections 2013. COMFREL found that there are no legal provisions to reject the restoration of her parliamentary immunity.³ On 22nd December 2011 followed the stripping of the immunity of another SRP MP. A Kandal Provincial Court prosecutor had requested to strip the immunity of SRP MP Chan Cheng in order to question him for an alleged offense that he had conspired to help a SRP deputy commune chief from Kandal Province to escape detention. The SRP deputy commune chief was waiting in pre-trial detention for charges of incitement relating to a land dispute. The allegation was denied by Chan Cheng. The National Assembly however voted subsequently with the MPs of CPP for the stripping of his immunity. Chan Cheng's immunity has not been restored until the end of 2011.⁴ Moreover on 21st November three SRP MPs resigned from parliament in protest against the government party. In an open letter to the National Assembly President, Heng Samrin, they justified their resignation with the words: 'While the government policies have been causing destruction for our country and suffering for our people, the National Assembly is only a rubber-stamp parliament that has never been able to help any victim of dictatorship and corruption.'⁵

Of concern remained also a persistent lack of deliberation and scrutiny in the legislative, which undermined the legislative power in 2011. Fewer MPs raised their voices in the plenary sessions and fewer hours were spent deliberating on draft laws in 2011 than in previous years. COMFREL counted in 2011 only 21 hours and 13 minutes of deliberations on legislation. Only 27 MPs held speeches in

² COMFREL: Annual Report on Democracy, Elections and Reform 2010, pp. 20-21

³ COMFREL Parliamentary Watch 2011 (Final Results)

⁴ Phnom Penh Post: 'Lawmaker Loses Immunity', 21.12.2011

⁵ SRP MPs Ms. Ke Sovannaroth (Siem Reap), Ms. Thak Lany (Kampong Cham), Nuth Rumdol (Kampong Speu): Resignation Letter form Three National Assembly Members From the Sam Rainsy Party, 21.11.2011

the plenary sessions of the National Assembly, of which 14 MPs were from CPP, 12 MPs from SRP and one MP from NRP (Norodom Ranariddh Party). Positively was only that the strongest opposition party had more speaking time in plenary sessions than any other political party. While CPP deliberated in total 6 hours and 56 minutes, SRP deliberated in total 13 hours and 46 minutes in 2011. However other political parties deliberated only few minutes or held no speeches at all. COMFREL observed that MPs of NRP deliberated only 31 minutes, while MPs of FUNCINPEC (National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia) held no speeches in 2011. Moreover MPs of HRP (Human Rights Party) were not allowed to speak in the plenary sessions because of procedural rules concerning deliberation in the plenum.⁶ These rules require MPs to form a group of at least ten MPs to speak in plenary sessions. But some parties have not enough MPs and are therefore forced to join other parties to form parliamentary groups. This includes the NRP (2 MPs), HRP (3 MPs) and FUNCINPEC (2 MPs). While the NRP and FUNCINPEC have joined CPP groups, HRP has declined to join any group arguing they want to maintain their political independency. However, this meant for MPs of HRP to be not allowed to speak in plenary sessions. This questionable procedural rule continued to weaken minor political parties also in 2011. It has not yet been abolished despite recommendations of the UN Special Rapporteur for Human Rights and COMFREL.⁷

In 2011 MPs also raised fewer questions in form of written letters to the executive. The submission of letters to the executive halved in 2011. Only 36 letters were sent, of which 29 were from SRP, five from NRP and two from HRP. In 2010 still 87 letters were sent to the executive for questioning.⁸

The peak of non-communication within the National Assembly between the government and opposition was reached, when the SRP boycotted the plenary session for the approval of the national budget 2012. Three SRP MPs resigned while SRP alleged a crisis of the constitution which requires at least 120 members present in the national assembly referring to article 76, but legal experts interpreted this reading as a controversial interpretation of the constitution. The SRP claimed that the new budget is an unbearable debt for the country and thought to block the approval through a parliamentary boycott. The national budget for 2012 was approved on 24th November with the votes of CPP and the royal FUNCINPEC and NRP. SRP boycotted the parliamentary session. The second largest opposition party, the HRP voted against the budget proposal.⁹

Positive in 2011 in regard to scrutiny was on the other hand, that MPs had more time to review draft laws. Draft laws were submitted to MPs seven days before deliberation in the plenary sessions, in 2010 only three days before. However this measure could not outweigh the general lack of deliberation and scrutiny observed in 2011. Besides, the National Assembly also continues to lack the material means (financially and technically) in order to fulfill its function as a genuine check and balance of the executive. Presently the 123 MPs and the nine commissions of the National Assembly should monitor 24 ministries including ministers, 400 secretary of states and undersecretaries of

⁶ COMFREL Parliamentary Watch 2011 (Final results)

⁷ COMFREL Parliamentary Watch Report 2010, p. 5; UN Human Rights Council: Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, A/HRC/18/46, 02.08.2011

⁸ COMFREL Parliamentary Watch 2011 (Final Results)

⁹ Phnom Penh Post: 'Budget pushed through – SRP believes boycott will raise doubts', 25.11.2011; Cambodia Daily: 'Record Budget Passes Without Opposition', 25.11.2011; COMFREL Parliamentary Watch Report 2011(Final Results)

states. Public figures show that this task can never be fulfilled properly with the funds received. Currently the 123 MPs of the National Assembly receive only funds of 1.09% of national expenditures, which is only half of what the Council of Ministers alone receives annually (2.48%).¹⁰

The lack of proper scrutiny and deliberation of the legislative was likewise reflected in the exclusion of the main opposition parties, SRP and HRP from the parliamentary working commissions and the Permanent Committee of the National Assembly. In previous legislatures it was general political consensus that all political parties represented in the parliament obtain at least a chairmanship in one of the nine parliamentary working commissions. However, since the fourth legislature the CPP has excluded all other political parties from these chairman positions (2008-2013). This has also not changed in 2011. The SRP and the HRP have reacted on this exclusion with a boycott of all nine parliamentary working commissions and are now not even represented as simple member in any of the commissions. Only the NRP and FUNCINPEC have agreed to occupy one simple member seat each in two of the nine parliamentary working commissions. The NRP is represented with one MP in the 'Commission on Interior, National Defense, Investigation, Anti-Corruption, and Civil Service Administration'. FUNCINPEC is represented with one MP in the 'Commission on Public works, Transport, Post, Telecommunication, Industry, Mines, Energy, Commerce, Land management, Urban planning, and Construction'.¹¹ Likewise the Permanent Committee of the National Assembly, who prepares the agenda for the plenary sessions, is also solely occupied with CPP members. This includes the President, the two Vice-Presidents and the Parliamentary Secretary of the National Assembly.¹²

A positive development in 2011 in contrary was MP field visits to citizens. They have increased in comparison to 2010. In 2011 107 MPs conducted total 2,318 field visits, while in 2010 only 1,953 field visits were conducted. Of those visits 1,228 concerned gift-distributions to voters, 689 visits had the purpose to strengthen the party organization, 311 field visits had the purpose to accompany government and parliamentary delegations and 38 field visits concerned MP interventions in ongoing land disputes, labor migration issues and disputes regarding illegal fishing lots. Other purposes of the field visits were to monitor voter registration and to educate voters. According to MPs interviewed by COMFREL, MPs of CPP, SRP and HRP were the most active. From CPP, 77 MPs made 1,218 field visits; followed by 23 SRP MPs with 556 field visits and three HRP MPs with 483 field visits. The two NRP MPs conducted twelve field visits and the two FUNCINPEC MPs 49 field visits.¹³

¹⁰ Ibid.

¹¹ COMFREL Parliamentary Watch 2011 (Final Results)

¹² UN: Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, A/HRC/18/46, 02.08.2011

¹³ COMFREL Parliamentary Watch 2011 (Final Results)

1.2 The Judiciary: Rule of Law¹⁴

The judicial power continued to remain similar weak than the legislative power in 2011. No notable changes were reported except that the RGC is implementing a new 'Action Plan for Legal and Judicial Reform 2009 to 2013'¹⁵. The reform has similar objectives than previous reforms of the judiciary in 2003 and 2005. According to a judicial report of the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and a report of the UN Special Rapporteur for Human Rights in Cambodia, the judiciary remains widely under the control of the executive. This contradicts provisions of the Cambodian Constitution that the judiciary should be independent (Article 128, 130). The current Supreme Council of Magistracy and Supreme Court President, the Supreme Court Deputy President and the Constitutional Council President are all members of the CPP Central Committee.¹⁶ In addition judges can be actively involved in politics. The Cambodian law does not oblige judges to resign from political activities before their appointment. Hence the UN Special Rapporteur for Human Rights in Cambodia concluded in 2011: '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.'¹⁷

Besides the lack of independency, the judiciary also continued in 2011 to remain weak in regard to law enforcement and a due process of law. Though a CCHR human rights report found positively that there 'was a reduction in the number of trials in which the issue of adequate time and facilities was raised by the defense and the rate of legal representation in trials involving felony charges edged closer to the 100% required by law'.¹⁸ Moreover 'that there were very few instances in which judges made statements that showed a lack of understanding of the presumption of innocence and that the handling of evidence and witnesses by the court remained a positive area, with fair opportunities for presentation and examination afforded to both sides'¹⁹. But CCHR also specifies that 'major concerns remain in relation to high levels of pre-trial detention and low levels of legal representation for those charged with misdemeanors and that allegations of police misconduct including threats and the use of violence and torture affected a small but significant number of trials.'²⁰ Similar problems have been reported and criticized by other human rights organizations including LICADHO, ADHOC, Human Rights Watch, Amnesty International and UNHCHR. This report cannot elaborate on all these cases reported by these organizations, but can only refer to them as verifiable evidence. A compilation of some cases can be found on the Cambodian Human Rights Portal.²¹

¹⁴ COMFREL does not have the capacities to monitor systematically the development of the judicial system, except related to electoral cases. COMFREL relies in the following mainly on secondary sources including reports of national and international human rights organizations from LICADHO, ADHOC, CCHR, Human Rights Watch, Amnesty International and UNHCHR.

¹⁵ Government of Cambodia: Action Plan for Legal and Judicial Reform 2009-2013, Phnom Penh 2009

¹⁶ See the CPP website: www.cpp.org.kh/category.php?mnu=3

¹⁷ UN Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, A/HRC/15/46, 16.09.2010, p. 7; 15-16

¹⁸ Cambodian Centre for Human Rights (CCHR): Second Bi-Annual Report 'Fair Trial Rights in Cambodia', Phnom Penh March 2011, www.cchrcambodia.org, p. 53

¹⁹ Ibid.

²⁰ Ibid., p. 53

²¹ See Cambodian Human Rights Portal, www.sithi.org

Even though the RGC has publicly confirmed to the UN Special Rapporteur for Human Rights that these problems persist, no substantial reforms have yet been made in order to overcome these substantial weaknesses of the judiciary.²² An illustrative example here fore is also that until today no Law on the Organization and Functions of Courts and on the Status of Judges and Prosecutors has been adapted to genuinely safeguard the independency of the judiciary. Against this background it is not surprising that a survey found that the judiciary is the institution, which is the least trusted by Cambodian citizens. Cambodia currently ranked last in the Global Rule of Law Index, which assesses the rule of law in 66 countries.²³ Despite that judicial institutions have been established and a number of essential laws have been approved by the RGC, the major challenge remains also in future how to ensure that the judiciary acts independently and that laws are implemented properly.²⁴

1.3 The Executive: Accountability and Transparency

Against this background, it is obvious that the executive dominates the political process. This raises questions on the accountability and transparency of the executive. When the legislative and judiciary cannot act independently from the executive, the executive only can control itself. In coalition governments as in the three previous legislatures an internal control mechanism was at least partly given with the coalition of CPP and FUNCINPEC. Moreover oppositional political parties were in the past represented in the working commissions of the National Assembly. Since the 2008 elections those scrutiny mechanisms of the executive are now widely obsolete. However, the self-control of the executive does not fulfill the promise of accountability and transparency. According to Transparency International, Cambodia ranks in the 'Perceived Corruption Index 2011' only 162 out of 182 countries and scores only 2.1 (the scale reaches from 1 to 10, the lower the score the more corruption is perceived in this country).²⁵ Moreover Cambodia ranked in the Open Budget Index (OBI) of 2010 only on place 15 out of 100 countries. Just Vietnam fell with a rank of 14 behind Cambodia. Thailand in comparison had a rank of 42. The OBI report stated that Cambodia's public has very limited possibilities to oversee how their government manages public revenues and expenses.²⁶

Though the RGC has made reforms in order to increase the transparency and accountability of the executive, specifically in regard to public finance, this reform process remains very slow and have not proceeded in 2011. Only in 2009 - for the first time since 1991, Cambodia's National Audit Authority – the highest authority to scrutinize government revenues and expenditures - published audit reports of the national budgets of 2006 and 2007. But both audit reports were published only two years after the actual fiscal year. Consultations with civil society organizations and oppositional political parties on public finances rarely took place in the past. The boycott of SRP of the parliamentary session to approve the national budget of 2012 was another setback in this regard. However, a positive development is the current initiative of the NGO Forum of Cambodia, who had started in

²² UN Human Rights Council, A/HRC/15/46, p. 11

²³ The Cambodia Daily: 'Cambodia Ranks Last in the Global Rule of Law Index', 15.06.2011

²⁴ UN Human Rights Council, A/HRC/15/46, p. 16; COMFREL: Democracy, Elections and Reform Report 2010, p. 26 and Democracy, Elections and Reform Report 2009, p. 16-17

²⁵ Transparency International: Corruption Perceptions Index 2011, www.transparency.org

²⁶ NGO Forum of Cambodia: Cambodian National Budget, www.cambodianbudget.org

2006 a survey on the national budget and provides some information on national budget policies in cooperation with RGC. But also these first efforts are so far limited. Until 2011 most financial documents still remained undisclosed. Moreover no audits are yet available for the fiscal years 2009 and 2010. Likewise concerns remain that the audit authority lacks independency similar to the judiciary, because of a perceived CPP dominance.²⁷ Beside a long demanded law on access to information has not yet been adopted. For many years different stakeholders have lobbied for such a law to increase the transparency and accountability of the executive. In 2011 the SRP took the latest initiative in proposing a draft law on access to information. It was rejected by the National Assembly.²⁸

In contrary more advanced seem to be the anti-corruption policy of the RGC in 2011. The first anti-corruption bill, which was passed on 1st April 2010 had been finally amended on 16th June 2011 after criticism of different stakeholders that the first law lacked provisions to safeguard the independency of the Supreme National Council against Corruption (SNCC). The old law stipulated that the SNCC budget will be provided by the Council of Ministers. The new law now requires that the SNCC will be financed from the national budget and therefore is under control of the legislative. However concerns about the independency of the SNCC remain. Although the current law requires that the eleven SNCC members must be elected for a renewable term of five years from members of the National Assembly, the Senate, the National Audit Authority, the Supreme Council of Magistracy, the Council of Legal and Judicial Reform, the Council of Jurists, the Cambodian Human Rights Committee, the King, the RGC and the Ministry of National Assembly-Senate Relations. What seems to guarantee the independency of the SNCC as the legislative, executive and judiciary are involved in the election of SNCC members. However the law still allows that the Chairman of the Anti-Corruption Unit (ACU) is solely appointed by the prime minister. There has not stopped suspicions that the ACU chairman might follow not the guidance of the SNCC but solely the guidance of the prime minister.²⁹

Some stakeholders have therefore raised suspicions that specifically the ACU could serve as a political shield to prosecute low-ranking or/and rival government officials while protecting high-ranking government officials from being investigated for alleged corruption. The suspicions have been further strengthened when it became known that the current SNCC president is a senior advisor of CPP and the anti-corruption unit is solely staffed with CPP officials.³⁰ Some stakeholders also suspected that the ACU might serve also as a political institution to suppress fragmentation within the CPP after conflicts within the CPP between Chea Sim and Hun Sen have been reported by media and civil society stakeholders in 2011.³¹ Suspicions rose than further about the role of the ACU and SNCC after an alleged corruption scandal at the Ministry of Social Affairs in July 2011, in which 5.8 million US Dollar had been allegedly siphoned up through corruption, but no investigation against government officials was conducted. The Ministry for Social Affairs according to media was only asked by the

²⁷ NGO Forum of Cambodia: Cambodia - Budget Transparency Brief, January 2011, No. 3, www.ngoforum.org

²⁸ COMFREL - Access to Information Working Group; see also NGO Article 19: Legal Analysis – Cambodia’s Draft Law on Access to Information, September 2011, p. 7

²⁹ RGC: Law on Anti-Corruption, Phnom Penh 11.03. 2010; Amendment of the Law on Anti-Corruption, Phnom Penh 14.07.2011

³⁰ Phnom Penh Post: ‘Mixed Reactions to Graft Unit’, 09.12.2011

³¹ Phnom Penh Post: ‘Intrigue in Ruling CPP Detailed’, 13.07.2011; Asia Times Online: Potemkin Graft Crackdown in Cambodia, 11.06.2011, www.atimes.com

RGC to repay the missing money and alleged officials were requested to go through 'educational measures'³².

Despite these suspicions, which cannot be verified by COMFREL, the current efforts of the RGC to combat corruption nevertheless have on the other hand positively raised the public awareness about corruption. Also civil society organizations have taken concerted efforts for anti-corruption campaigns. In effect public awareness about corruption has significantly risen in 2011. This increases the pressure on government agencies to act against civil servants who misuse their positions to charge extra on tax charges or other fees for government services. Since May 2011 government officials are also obliged to declare their assets. ACU reported that about 25,000 officials had declared their assets, though the assets were not disclosed by the ACU to the public.³³ Soon after the establishment of the ACU, also first corruption charges were brought against high-ranking government officials. This included prominent figures like the former Chief of Protocol, two government advisors, one former cabinet member and the chief of the bodyguard unit of Chea Sim, who is currently the President of the Senate and CPP Party Chairman. They were alleged for a scam including 51 foreign companies and hundreds of millions of dollars for development and humanitarian projects.³⁴ Moreover the police chief for Banteay Meanchey Province, along with other high-ranking officials of his unit including the deputy police chief, a prosecutor for Pursat Province and a former secretary-general of the National Authority for Combating Drugs have been arrested for corruption and other related charges.³⁵ The prosecutor of Pursat was handed a nineteen years prison sentence in May on conviction of corruption, extortion and false imprisonment. The police chief of Banteay Meanchey was sentenced in November to four years in prison and fines of nearly US\$ 320,000 for soliciting thousands of dollars in bribes from drug traffickers. Similar his deputy was charged for drug offences and sentenced to four years imprisonment and US\$ 10,200 in fines. The former secretary-general of the National Authority for Combatting Drugs and above mentioned employers of Chea Sim with the exception of the chief of the bodyguard unit have also been sentenced to prison terms in 2011/12.³⁶

2. Democratic Elections

As a signatory of the International Covenant on Civic and Political Rights (ICCPR) and commitments to the Universal Declaration of Human Rights in provisions of the Cambodian Constitution, Cambodia has obliged itself to genuine democratic elections in order to determine political power. The Cambodian Constitution states in several provisions: 'Khmer citizens of both sexes shall enjoy the right to vote and to stand as candidates for the election. Khmer citizens of both sexes, at least eighteen years old, have the right to vote. Khmer citizens of both sexes, at least twenty-five years old, have the right to stand as candidates for the elections of the members of the National Assembly (...). Provisions restricting the right to vote and the right to stand as candidates for the elections shall be

³² The Cambodia Daily: 'Corrupt Officials To Be 'Educated', Says Minister', Phnom Penh 19.07.2011

³³ COMFREL Government Watch (Preliminary Results 2011)

³⁴ Phnom Penh Post: 'Ex-Chea Sim Advisor Back on Witness Stand', 18.11.2011 and 'Scammers Speak Out', 07.10.2011

³⁵ Phnom Penh Post: 'Mixed Reactions to Graft Unit', 09.12.2011

³⁶ Phnom Penh Post: 'Trial Set for Chea Sim Advisors', 16.12.2011 and 'Trio of Moek Dara Cases Heard', 20.12.2011, 'Moek Dara jailed for life', 06.01.2012, 'Chea Sim Advisors Sentenced', 28.12.2011

determined by the Electoral Law' (Article 34). Moreover the Universal Declaration of Human Rights states: 'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (...) The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures' (Article 21). And the ICCPR states: 'Every citizen shall have the right and the opportunity (...) to take part in the conduct of public affairs, directly or through freely chosen representatives; (...) To vote and to be elected at genuine periodic elections, this shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors (...) (Article 25).

Democratic elections can therefore be understood as a genuine element of Cambodia's democratization process. Democratic elections should allow Cambodian voters to choose equally and freely among political programs and candidates provided by at least two political parties contesting in competitive elections for government offices. Since in 2011 no elections were held except for one by-election in one district of Phnom Penh on communal level³⁷, this annual report focuses its analysis not on the conduct of elections, but instead on demands for reforms of the electoral system, gives a preliminary account of COMFREL's Election Watch observations on the annual voter registration exercise and elaborate on prospects for the upcoming senate elections in January 2012. Evaluations of past elections can be found in COMFREL reports, which are published on its webpage.³⁸

COMFREL finds that few reform demands have been met in 2011 for the upcoming senate, communal and parliamentary elections in 2012 and 2013. Major reforms including changes of the composition of the National Election Commission (NEC) and subordinated electoral commissions on provincial, communal and local level, an increase of National Assembly seats because of changes in the population size of electoral constituencies, a reform of the electoral regime for the senate towards a more competitive election and changes of the electoral law towards a more coherent legal framework including more comprehensive procedures for electoral complaints are outstanding. Since such reforms were not made, the NEC continued to lack confidence among different political stakeholders, while the current number of National Assembly seats continues to put the principle of equal universal suffrage into question. Moreover the electoral law remains complex and lacks efficient complaint mechanisms. Positively in 2011 however was that reforms of the annual voter registration have led to improvements in the annual voter registration exercise, though technical problems and allegations that the registration was misused for electoral campaigns and even led to disenfranchisement of voters showed continues weaknesses of the current voter registration system.

2.1 Electoral Reform

Political parties other than CPP continued in 2011 to demand NEC reforms. The NEC and the subordinated provincial and communal election commissions are perceived to lack independency and im-

³⁷ By-elections for the communal council were held in a newly created district of Phnom Penh named Po Sen Chey on 10th December 2011. CPP secured 15 seats, SRP 4 seats. No irregularities were reported.

³⁸ See COMFREL Election Reports, www.comfrel.org

partiality because of CPP dominance in the state administration.³⁹ In the past, the election commissions were composed of members of all political parties represented in the parliament of the last legislature. But this formula was changed before the parliamentary elections 2003 in order to increase the impartiality of the election commissions after conflicts between political party representatives within the election commissions occurred in the course of the parliamentary elections 1998.⁴⁰ According to the amended Law on the Elections of National Assembly 2008 (LEMNA), the NEC should be an 'independent and neutral body' and election commissions on all levels should be 'neutral and impartial in the implementation of their duties'.⁴¹ But one provision of the LEMNA stipulates that electoral officials have to resign only temporarily from their party positions 'until the expiration of their mandates'⁴² and election officials have to be recruited by the Ministry of Interior, the Council of Ministers and the National Assembly. Since these institutions are dominated by the CPP after the parliamentary elections in 2008, these provisions have not decreased suspicions among other political parties than CPP that electoral officials are not genuine neutral and independent.

Even though on national level proportionality has been tolerated despite the LEMNA provisions, what means that currently the NEC is composed of five CPP, two FUNCINPEC and two SRP members, on provincial, communal and local level this proportionality has not been yet applied. Other political parties than CPP therefore have recommended in 2011 to introduce proportionality on all other levels of the election administration. The recommendation was hereby facilitated by COMFREL.⁴³ In the view of other political parties than CPP this reform would increase the confidence and transparency of the election administration for the upcoming elections. COMFREL and other stakeholders have therefore pressured to discuss this reform.⁴⁴ But so far reform proposal has not been taken into consideration. COMFREL believes even when this reform still raises doubts about the influence of other political parties in the elections commissions since the present electoral law stipulates that NEC decisions can only be made with a simple majority and initiatives need at least three NEC members, what means that other political parties than CPP still would have not enough members to influence the NEC decision-making process because they lack a majority in the commissions. This reform definitely would increase the transparency of the electoral process and would allow also other political parties than CPP to initiate reform proposals within the election commissions on all levels.⁴⁵

Regarding the present number of National Assembly seats COMFREL and other stakeholders, including the previous EUEOM Cambodia 2008, had recommended to increase the number of seats for the next parliamentary elections. According to COMFREL and EUEOM the number of eligible voters in four of the 24 constituencies, namely Battambang, Siem Reap, Sihanoukville and Kandal, has significantly increased, which requires that seats are added in order to comply with the international prin-

³⁹ COMFREL: Assessment and Final Report National Assembly Elections 2008, pp. 8-17

⁴⁰ Vgl. Gallup, Jeffrey: Cambodia's Electoral System: A Window of Opportunity for Reform, in: Croissant, Aurel; u. a.: Electoral Politics in Southeast and East Asia, Friedrich-Ebert-Stiftung, Singapur 2002, pp. 25-73

⁴¹ Cambodian Law on the Elections of Members of the National Assembly 2008, Article 12

⁴² Ibid, Article 15

⁴³ NRP, SRP, HRP and FUNCINPEC: 'Recommendations for Reforming the Composition of the National Election Committee to Build Trust Among Political Parties Contesting Elections', May 2011

⁴⁴ Voice of America (VOA): 'Parties want Representation in National Election Committee', 30.08.2011; COMFREL: 'Trust Deteriorating in National Election Committee', 17.10.2011

⁴⁵ European Union Election Observer Mission in Cambodia: Final Report – National Assembly Elections 2008, Brussels Oct. 2008, p. 15

principal of 'universal and equal suffrage' as stipulated in the Universal Declaration of Human Rights in Article 21. The EUEOM concluded in its election report 2008 that 'according to statistics provided by the National Institute of Statistics the number of citizens per province would require some modifications as there are significant variations among the constituencies in the size of population per seat. In some cases such variations do not comply with the principle of equal suffrage contained in the Universal Declaration of Human Rights, Article 21'⁴⁶. However, in November the Council of Ministers decided to keep the present seat number. The RGC justified the decision with financial constraints caused by the global financial crisis and the flood crisis in 2011.⁴⁷ However COMFREL estimates that costs for 127 seats would only increase by 0.12% of national expenditures for the additional seats.⁴⁸

Another widely perceived problem of the current electoral system among national and international stakeholders is the current electoral legal framework. The law is considered to be too complex, to lack clear complaint procedures and proper enforcement mechanisms. However no reforms have been yet initiated or announced by the NEC to simplify the electoral legal framework. Currently there are eight different complaint procedures in place. Moreover different institutions share responsibility in enforcing the electoral law, including the NEC itself, the constitutional court and criminal courts. COMFREL recommended in its election report 2008 a number of reforms regarding the legal framework in order to enhance the confidence into the work of election commissions.⁴⁹ Similar the EUEOM Cambodia stated in its electoral report: 'Overall, the legal framework remains fragmented, and the wide variety of norms of different levels and nature (including regulations, directives, reminder directives, manuals, guidelines, decisions and instructions developed by the NEC and relevant ministries) sometimes creates confusion as to which rule should prevail. The law does not set a clear hierarchy of norms. The lack of consolidation of the regulatory framework makes it difficult for any stakeholder to have access to the rules and to have a clear understanding of them.'⁵⁰

2.2 The Right to Vote: Voter Registration and Voter List

In the past different electoral stakeholders had raised concerns regarding irregularities and technical difficulties in the voter registration. There were claims that the registration had not ensured the right to vote for all citizens and might have been biased in favor of CPP.⁵¹ The current annual voter registration system was hereby seen by many stakeholders including also the NEC as an obstacle to

⁴⁶ EUEOM Cambodia 2008, p. 16

⁴⁷ Phnom Penh Post: 'National Assembly Has 'Enough Seats', 28.11.2011

⁴⁸ COMFREL Election Monitoring 2011 (Preliminary Results), see also page 6-7 of this report concluding that the National Assembly lacks resources to function properly.

⁴⁹ COMFREL: 2008 National Assembly Elections – Final Assessment and Report, Phnom Penh 2008, p. 84

⁵⁰ EUEOM Cambodia 2008: Final Report – National Assembly Elections 2008, Brussels October 2008, p. 12

⁵¹ After the parliamentary elections in 2008 COMFREL estimated that approximately 440.000 voters could not exercise their voting right because they could not find their name on the voter list or could not find their polling station, though the estimated number might have been lower because of double entries. Another voter registration audit, conducted before the elections 2008 by NICFEC (Neutral and Impartial Committee for Free and Fair Elections in Cambodia), COMFREL, CAS (Center for Advanced Studies) and NDI (National Democratic Institute) revealed that more than 57,000 voters (0.7 percent) were incorrectly removed from the voter list. Also EUEOM Cambodia concluded for the 2008 elections that '(...) there were a significant number of mistakenly disenfranchised voters (...)'. The difficulties with the registration had raised suspicions among some political parties that the registration was systematically biased in favor of CPP, though these allegations remained unproven.

overcome these problems.⁵² Some recommended therefore that the voter registration exercise could be better facilitated with the obligatory use of national identity cards (IDs). So far already 92 percent of voters used IDs to identify themselves in the 2011 voter registration. But still not all have yet IDs. Moreover until June 2011 it was unclear if IDs which will expire before the upcoming elections can be used for the next elections. This led to suspicions that intentionally or unintentionally fraudulent forms of voter registration are still possible. Against this background COMFREL has focused also this year its attention on the annual voter registration exercise. COMFREL employed 47 observers to monitor the registration and 231 observers to interview voters and audit the voter list.

COMFREL found in 2011 positively that considerable efforts were taken by the RGC and NEC to improve the voter registration in order to overcome such problems. First the RGC resolved the question of expiring IDs in 2011 by adopting on 23rd June a sub-degree which extends the validity of about four million IDs until the end of 2013. This allows eligible voters to use these IDs for the upcoming elections. In addition, some other amendments of the electoral law and decisions of the RGC and NEC improved the annual voter registration. This includes that the NEC and the Ministry of Interior decided to replace the controversial voter identification document 'form 1018' with a new form named 'Identification Certification for Election (ICE)'. This one will be harder to tamper than the old form. According to the NEC 426,116 ICEs were issued so far for voters in 2011. Commune councils and NEC were this time also able to control the procedure of issuing this form as COMFREL Election Watch observed. This was not the case in 2008, when the NEC and commune councils were not able to provide the total number of issued 1018 forms, while COMFREL had found around 440,000 such forms.⁵³ Positively is also that COMFREL's recommendation regarding provisions concerning voter registration in newly established or delimited communes have been accepted by the NEC. It was agreed that old commune councils remain responsible for the preliminary voter registration, though that voters, who are asked to live in new communes have not to register for the elections again.⁵⁴

Additionally an amendment of the electoral law, approved by the National Assembly on 11th May 2011 ensures now that especially younger voters, who just became eligible to vote, have more time to register for the upcoming elections in 2012 and 2013. The whole voter registration exercise period including the updating of the voter list has been increased timely from 90 to 120 days, the official registration time has been increased from 20 to 45 days and the complaint period extended from five to ten days. Likewise the number of eligible voters has considerable increased by 660,210 voters between 2008 and 2011. In 2008 8,543,283 eligible voters were registered, in 2011 9,203,493 of whom 4,861,853 are female voters and 3.4 million are young voters between the age of 18 and 30 years.⁵⁵ This number exceeds NEC estimations of 8,894,219 eligible voters for 2011. This numbers generally indicates that the voter registration had been conducted more successfully this time. However some concern remain about the accuracy of the total number of eligible voter and the quality of the current voter list for the next elections since the NEC figures can claim to have regis-

⁵² National Democratic Institute (NDI): Electoral Reform in Cambodia – Program Consultation Report, August 2009. pp. 8 - 29

⁵³ COMFREL: 2008 National Assembly Elections – Final Assessment and Report, Phnom Penh 2008, p. 17

⁵⁴ COMFREL Election Watch (Preliminary Results 2011)

⁵⁵ NEC: Official Voters List Has Been Validated, Phnom Penh 3th January 2011, www.necselect.org.kh

tered 104% of voters, while COMFREL found that only 94% of all eligible voters were actually registered.⁵⁶

Some technical and political problems also persisted during the voter registration exercise as observed by different electoral stakeholders and COMFREL, though these problems have not been observed in the majority of communes and therefore do not reflect a nation-wide trend. Positively the NEC welcomed and acknowledged these observations of national and international electoral stakeholders during the voter registration exercise, though the NEC questioned some of the observation results, commenting that some are not representative, lacked information or had been wrongfully reported.⁵⁷ According to NEC 56 complaints of voters and political parties were made during the registration exercise and all concerned technical problems were resolved by the NEC.⁵⁸

Especially last year's flooding and the increasing number of dislocated citizens caused by land disputes has led to difficulties in the registration in some communes.⁵⁹ According to LICADHO the number of citizens affected by land disputes and evictions was in 2009 already estimated to be 250,000 citizens.⁶⁰ Though was observed that voters, who have been deprived of land, missed documents to register as voters in Anlong Veng Commune, Oddar Meanchey Province and Dangkar Khan, Phnom Penh.⁶¹ In some communes of Takhmau, Kandal and Rattanakiri Province was observed that voters were registered on behalf of other voters, what is prohibited by law, though this might have facilitated voter's registration in remote areas. NICFEC and NDI reported that 'in forty percent of 299 observed communes, people were allowed to register without coming in person (...).'⁶² Additionally COMFREL observed that voter lists for verification were only displayed after registration started in some communes, while in some remote communes, voter registration was not properly announced in advance and no timetable for voter lists verification and registration had been provided.⁶³ In some communes voters reported to COMFREL that they have not found their names on the new voter list of 2011, though they were registered.⁶⁴ Additionally some communes was observed that clerks in charge for the voter registration did not follow the regulation of working time, some left office early and some did not come to work at all.⁶⁵ Also the voter information campaign for the registration exercise seem to have been insufficient. Though the NEC conducted voter information campaigns in TVK, Bayon and CTN, there were not enough funds available in order to reach all concerned voters. COMFREL found that a number of voters were therefore uninformed as observed in some communes where new voters thought they need IDs to register to vote, though

⁵⁶ COMFREL Election Watch (Preliminary Results 2011)

⁵⁷ NEC: 'The Statement of the NEC Spokesman', Phnom Penh 06.10.2011 and 'The Clarification of the Improper Raise-up of Some NGOs Regarding the 2011 Voters' List Revision and Registration of Voters', Phnom Penh 12.11.2011

⁵⁸ Ibid.; see also Phnom Penh Post: 'Voting Complaints Lodged at NEC', 23.11.2011

⁵⁹ NDI and NICFEC cited in Voice of America (VOA): 'NEC Extends Registration In Flood-Hit Areas, 11. Oct. 2011

⁶⁰ LICADHO: Land Grabbing and Poverty in Cambodia: The Myth of Development, May 2009, p. 5

⁶¹ Ibid.

⁶² NDI and NICFEC cited in Voice of America (VOA): 'NEC Extends Registration In Flood-Hit Areas, 11.10.2011

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ COMFREL Election Watch 2011 (Preliminary Results)

they actually can register without it. In some communes, was also reported that election monitors found that young voters lacked awareness about how to register to vote.⁶⁶

Conversely local authorities of CPP have blocked some SRP voter information campaigns accusing SRP of covered election campaigns. This was denied by SRP, who suspected the same intentions on behalf of the CPP. Also voters from other political parties (NRP, HRP and FUNCINPEC) had raised such concerns. Nevertheless COMFREL had observed covered election campaigns as CPP party emblems were displayed in some registration offices. This might have also been the case in other communes - though not yet verified – as it is known that the voter registration is managed by commune councils, who are mainly controlled by CPP since the communal elections 2007. Only thirty out of 1,621 communes are controlled by other political parties and 98 percent of commune council chiefs and village chiefs are CPP affiliates.⁶⁷

COMFREL's audit of 2011 voter list found that 17.2% of registered voters had no data recorded on the 2011 voter list (their name could not be found or there was a complete change of name), again this is lower than the 18.5% on the 2008 voter list. However, this still amounts to some 1.5 million registered voters, some of whom are likely to lose their right to vote in the coming elections. According to the survey report on voter list and voter registration 2008, 440,000 of eligible voters could not cast their ballot owing to certain obstructions, mainly due to the inability to find their name and/or polling station. The audit found the inaccuracy in recorded data was highest within the province of Phnom Penh where 12.7% of voters had no data recorded on the voter list. This was followed by Rattanakiri 7.6%, Uddor Meanchey 7.3%, Koh Kong 6.11%, Battambang 5.96%. The remaining provinces were below 5%.

COMFREL has increased concerns on the voter list which can disenfranchise voters for coming commune council elections. COMFREL continues to check these claims by conducting a voter survey and audition of the voter list.⁶⁸

2.3 The Senate Elections in 2012

COMFREL finds that the upcoming senate elections scheduled for 29th January 2012 to determine the seat of the second chamber of the Cambodian Parliament are predictable since the senators will be elected indirectly by 11,351 commune councilors, who will vote together with the 199 MPs of the National Assembly. The government party CPP will win the majority of seats, because the majority of commune councilors and MPs are from CPP. In the last senate election 2007, CPP gained 43 seats, FUNCINPEC 9 seats and the SRP 2 seats. A pre-calculation found that CPP will get 46 seats while SRP will get 11 seats. This election therefore does not create a genuine democratic competition. Moreover FUNCINPEC and NRP cannot participate in the elections with own candidates, because they have not gained enough commune councilor seats in the past elections 2007 to vote for own candidates for the senate. Likewise HRP candidates cannot participate in the elections, because HRP has no

⁶⁶ Voice of America (VOA): 'Many in Electorate Don't Understand System: Monitors', 26.09.2011

⁶⁷ COMFREL Election Watch 2011 (Preliminary Results)

⁶⁸ Ibid.; A detailed COMFREL report on the voter registration will follow in 2012 including a voter survey

commune councilors. The elections therefore only reaffirm the CPP dominance, though SRP might benefit from the elections, because it is the only party to compete with the CPP for seats in the senate and will most likely gain the votes from the FUNCINPEC and NRP councilors and MPs. However the election remains questionable for COMFREL considering that the elections will cost the tax payer US\$ 557,000, despite that the elections are not an efficient way to strengthen the legislative which already lacks resources. Additionally these elections created already patterns of law violation, in particular vote buying and oath swearing as the current election campaign already shows.

The official campaign for the senate elections should have started on 7th January 2012 for three weeks. However the campaign already set in in December 2011 and was characterized by first irregularities. SRP alleged that CPP attempted to coerce and offer to buy votes of SRP commune councilors. In Battambang Province SRP claimed that the CPP president of Battambang Provincial Council persuaded and attempted to bribe five SRP commune councilors offering US\$500 to US\$700 per person for their votes. Also complaints against other CPP as well as HRP members for vote-buying were made by SRP. CPP and HRP denied the claims.⁶⁹ CPP alleged SRP instead to have forced commune councilors to swear loyalty to SRP by undemocratic means. Prime Minister Hun Sen and the Cambodian People Network for Peace (CPNP), an NGO alliance affiliated to CPP, compared the SRP measure with the Khmer Rouge in saying they are 'acting like Pol Pot'⁷⁰. However, according to COMFREL observations and media in 2008, also CPP had voters let swear oaths of loyalty before the parliamentary elections in 2008.⁷¹ SRP President, Kong Koam defended the oath swearing, saying that this is a way for commune councilors to show honesty towards voters and necessary to prevent vote-buying. COMFREL considers bribing voters, offering or threatening the loss or gain of posts or demanding voters to swear an oath of loyalty, illegal acts according to the current electoral law.⁷²

3. Democratic Competition

A multi-party democracy essentially means that political parties enjoy the freedom to compete with their political programs for voters support, not only during elections but also in election-free periods. That election campaigns are limited in time, does not mean that political parties remain silent during the remaining period. They have essential functions, whether as government parties to communicate the progress of implementation of their political programs or as opposition parties to monitor and provide alternative policies to government policies. Moreover do political parties aggregate interests of different segments of the population, represented individually or in interest groups into their political programs and represent these interests in the legislative. The process of political communication between political parties and voters is therefore a continuity, in which elections are only one important element. In order to guarantee a democratic competition among polit-

⁶⁹ Phnom Penh Post: 'Vote-Buying Claims Sparks Row', 29.11.2011 and 'CPP Officials Denies Vote-Buying Claims', 09.12.2011

⁷⁰ Phnom Penh Post: "SRP 'acting like Pol Pot'", 29.12.2011; see also CPNP: Joint Statement of the Cambodian People Network for Peace, The Legitimate Rights of Commune Councilors Threatened by SRP, 27.12.2011

⁷¹ COMFREL Election Report 2008; see also Phnom Penh Post: 'HRP Ceremony Casts Away Voter Oaths To Other Parties', 25.07.2008

⁷² COMFREL refers here to the new Article 33 of the Law on Senate Elections, which refers to the articles of 124, 125, 126, 127, 128, 129, 130, and 132 of the Law on the Election of National Assembly Members 2008

ical parties, multiparty democracies ideally spoken, provide a level-playing field in which all political parties have equal opportunities to communicate their programs to the population. This includes equitable access to media and state resources and a constructive political discourse between competing political parties and the population. Hereby essential are political rights as outlined in the International Covenant on Civic and Political Rights including the freedoms of expression, assembly and associations in order to guarantee a level playing field for genuine democratic competition. Furthermore it also needs mutual respect between political parties to acknowledge the importance of a level-playing field and the necessity of political program alternatives from which voters can choose. Limits are only set in democratic constitutions in regard to explicit anti-democratic political parties.⁷³

The political system of Cambodia is by law a multiparty democracy, which guarantees democratic competition. The Law on Political Parties from 1997 defines in Article 6 what a democratic political party is, while prohibiting anti-democratic parties: 'All political parties shall not be allowed to conduct any of the activities as follows: 1. Make up an autonomous zone which may harm to the national unity and territorial integrity; 2. Conduct of subversive actions against the liberal democratic and pluralism regime by the use of violent means in a purpose of seizing the power; and 3. Organizing armed forces'. The party law moreover stipulates in Article 28 that state resources for election campaigns can be allocated: 'The state could allocate the national budget of equal amounts to all political parties, for a purpose of using only in the campaign for election of representatives of the people (members of parliament). Any political party which fails to receive 3% (three per cent) of the total of valid ballots of the whole country or which fails to gain one (1) seat in the parliament, shall, within a period of three months from the date of proclamation of the election final result, pay back such above allocated budget in full amount to the state.' Political Participation rights are guaranteed as will be described later with provisions in different national and international law. Moreover Cambodia's Constitution explicitly guarantees the right for political competition in stating: 'Khmer citizens shall have the right to create associations and political parties (...)' (Article 42).⁷⁴ Hence Cambodia's political system has succeeded to establish a multiparty system in the past years. A plurality of political parties had contested in past elections. From the eleven registered parties in the last elections, five political parties have gained seats in the National Assembly and commune councils.⁷⁵

However, COMFREL finds that the plurality of political parties has not developed to a genuine democratic competition in 2011 nor in past years. The political competition remained characterized by an uneven level-playing field, which underlined as in previous years the political dominance of the CPP. Better access to media and use of state resources allowed CPP to take advantages in the political competition, with which no other political party could keep pace. But also destructive political discourses between the SRP and the CPP leadership had led to an uneven level-playing field. This in

⁷³ Croissant, Aurel: Electoral Reform and Party Systems in East Asian Democracies, Friedrich Ebert Foundation (FES) Bangkok 2007

⁷⁴ Cambodian Law on Political Parties, 28.10.1997

⁷⁵ These are the Cambodian People Party (CPP), SRP (Sam Rainsy Party), HRP (Human Rights Party), NRP (Norodom Ranariddh Party) and FUNCINPEC (United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia). The League for Democratic Party, Khmer Democratic Party, Hang Dara Democratic Movement Party (HDDM), Society of Justice Party, Khmer Republican Party and the Khmer Anti-Poverty Party had not gained yet seats in parliamentary and communal elections. Only exception is HDDM, who has won one councilor seat in the communal elections 2007. The CPP is with 90 parliamentary seats the strongest party, followed by the main opposition party SRP, who has gained 26 seats and the HRP who has gained three seats. NRP and FUNCINPEC gained each two seats.

consequence has also silenced a constructive public discourse over domestic and international political issues of importance and affected voters and other political parties negatively. The lack of respect for a level-playing field, mainly by CPP, but also SRP has limited alternative policy choices for voters and hampered the democratization process. Also no other political party than the CPP so far had access to state resources to financially support their election campaigns.

3.1 Access to Media

For many years national and international stakeholders have criticized a lack of equitable access to media for political parties other than CPP.⁷⁶ Specifically TV broadcasters of Cambodia are considered to lack equitable access for political parties other than CPP, though they have today the largest audience in Cambodia.⁷⁷ This trend continued also in 2011. CPP received almost the double of broadcasting time in TV stations than any other political party. Hereby also the tone in the broadcasts was overwhelmingly positive for CPP. COMFREL observed no negative tone for CPP. In contrary SRP and HRP received with 120 minutes a considerable amount of negative broadcasting, while no positive tone was observed. Likewise, the parliamentary parties NRP and FUNCINPEC and minor political parties, not yet represented in the parliament received with 76 minutes very limited broadcasting time. COMFREL media monitoring results shows the media bias in TV broadcasters in favor of CPP:

COMFREL Media Monitoring Results⁷⁸

Political Parties in Minutes	TV Pos.	Neg.	Neut.	TV Total	Radio Pos.	Neg.	Neut.	Radio Total	Total Pos.	Neg.	Neut.	Media Total
CPP	71	1	744	816	22	30	674	726	93	31	1418	1542
SRP	3	75	417	495	5	28	1028	1061	8	103	1445	1556
HRP	0	45	103	148	0	1	121	122	0	46	224	270
FUNCINPEC	0	0	46	46	0	3	97	100	0	3	143	146
NRP	0	2	8	10	0	3	94	97	0	5	102	107
Other Parties	0	0	5	5	0	0	48	48	0	0	53	53

COMFREL conducted media monitoring from 1st September 2011 to 15th January 2012 during the prime time from 5pm to 11pm on a daily base. The monitoring exposed that CPP received more positive broadcasting time in TV stations than any other political party. The monitored TV channels TVK, CTN and Bayon TV (latter two private channels) continued to broadcast predominantly in favor of CPP not only in terms of broadcasting time, but also in content. The CPP received 816 minutes in the

⁷⁶ COMFREL: Final Report of Media Monitoring – National Assembly Elections 2008. Period: 1st June to 31st July 2008, Phnom Penh July 2008 and previous Media Monitoring Reports of 2002, 2003 and 2007, www.comfrel.org

⁷⁷ British Broadcasting Cooperation (BBC): Cambodia Sentinel Survey 2008, Media Consumption, Phnom Penh April 2009

⁷⁸ Methodologically COMFREL Media Monitoring counts broadcast time for political parties in second sequences classified as positive, negative and neutral. Positive is defined as favorable view of a political actor, negative as unfavorable view of a political actor and neutral tone is information which conveys a neutral message. To mention is also, that the media monitoring does not include broadcast time and content broadcasted for government officials affiliated to the CPP. For example Prime Minister Hun Sen speeches are only counted when he refers to the CPP or CPP party symbols are displayed during broadcasts.

prime broadcasting time, of which 71 minutes were positive and only one minute negative. The SRP received broadcasting time of only 495 minutes, of which 75 minutes were negative. Only three minutes had positive tone. The HRP received broadcasting time of 148 minutes, of which 45 minutes were negative, while no positive tone was observed. FUNCINPEC received 46 minutes, of which all broadcasting time was in neutral tone. NRP received ten minutes of which two minutes were in negative and eight minutes neutral, while also no positive tone was observed. Political parties not represented yet in the parliament gained broadcasts of only five minutes.⁷⁹ CTN and Bayon TV moreover continued to broadcast programs in the monitoring period, which strongly criticized the SRP and HRP, while appreciating achievements of the CPP and its government. These programs are named 'Vetika Panha Chun' of CTN and the 'News Analysis' of Bayon TV.⁸⁰ Also CPP campaigns in popular comedy programs in the TV stations CTN and Bayon TV continued. Comedians are hereby employed by the 'Propaganda and Education Commission', run by the Prime Minister's Bodyguard Unit, which is an autonomous section within the Royal Cambodian Armed Forces. Currently 152 performers and artists including the bulk of Cambodian Comedians are employed for CPP campaigns.⁸¹

Only some private and two state-run radio stations gave other parties than CPP more equitable broadcasting time. However it remain questionable if these broadcasts can counterbalance the currently estimated broadcasts of total forty radio stations in Cambodia, of which many unmonitored radio stations might favor the CPP. Besides, minor political parties (except HRP) received considerable less broadcasting time in radio stations. Although they are represented in the National Assembly, FUNCINPEC received only 100 minutes, of which 3 minutes were in negative and the remaining time in neutral tone. NRP received only 94 minutes of which three minutes were in negative tone and the remaining time neutral. Other parties gained even only 48 minutes in monitored radios.⁸²

Nevertheless more equitable broadcasting time for SRP and HRP was observed in two state-run radio stations named FM 96 and AM 918 and the private radio stations FM 105, FM 106.5 MHz, Voice of America (VOA), Radio Free Asia (RFA), and Radio France International (RFI). SRP received in these monitored radio stations much more broadcasting time than CPP and other political parties with total 1,061 minutes of which 5 minutes were positive and 28 minutes negative and the remaining time in neutral tone. CPP received in these stations only 726 minutes, of which 30 minutes were negative and 22 minutes positive and the remaining time in neutral tone. Also HRP enjoyed a more equitable access in these radio stations. While HRP received in radio stations except for FM 105 only 122 minutes, HRP had rented in 2011 daily broadcasting time in FM 105 for two hours daily. One HRP program runs from 1 to 2pm and another from 6pm to 7pm. The latter was monitored by COMFREL. When these broadcasts of FM 105 in the prime time are added, HRP received in total 74 hours and 12 minutes of broadcasting time, of which 52 minutes were negative, 45 minutes positive and the remaining time in neutral tone. This is considerable more broadcasting time than any other political party. The program broadcasts information from HRP headquarters, news and political com-

⁷⁹ COMFREL Media Monitoring (Final Results 2011)

⁸⁰ Ibid.

⁸¹ The Atlantic: In Cambodia, Comedians Double as Government Propagandists, Washington DC 15.06.2011, www.theatlantic.com

⁸² COMFREL Media Monitoring 2011 (Final Results)

ments in favor of HRP and conducts 45 minute forums educating citizens on history, democracy, good governance, elections and runs a Khmer Krom News program every Sunday. However this strong media coverage for HRP remains relative, since FM 105 can only be heard in Phnom Penh.⁸³

3.2 Access to State Resources

Beside unequal media access for other political parties than CPP, the government party continues also to benefit from the use of state resources and support of civil servants, what breaches the Law on the General Status of Civil Servants and the Law on Political Parties. There is a systematic arrangement by the ruling political party, CPP in order to engage the government officials, civil servants, military and police with its political party activity.

This additionally has increased the unequal level-playing field for a genuine democratic competition in the past as well as in 2011. From 1st September to 15th October 2011 COMFREL observed 107 cases of professional breach by the government party and civil servants including misuse of public buildings and government ceremonies for party purposes and misuse of state resources, despite that the Law on the General Status of Civil Servants in the Kingdom of Cambodia explicitly prohibits any political party activity of civil servants. Article 37 states: 'Any civil servant shall be neutral when exercising his/her functions and shall forbid himself/herself to use his/her position and the State facilities to undertake the following political activities: to work for or against a political candidate, to work for or against a political party. Any behavior contrary to this Article shall constitute a transgression or a professional breach.'⁸⁴ Moreover Article 15 of the law on political parties states: 'Religious priests, members of judiciary, members of the Royal Cambodian Armed Forces (RCAF) and National Police Forces may join as members of political parties, but they shall not engage with (or conduct) any activity for supporting or opposing any political party. A political party shall not organize its organizational structure inside the religious bodies, Royal Cambodian Armed Forces and in National Police Forces.'⁸⁵ Likewise Article 29 of the Law on Political Party states: 'Political parties shall be banned from receiving any contributions from government's Institutions, associations, NGOs, public enterprises, public establishments, public institutes or foreign firms (...).'⁸⁶

Following cases are a preliminary illustration of breaches of professional conduct of civil servants including the misuse of public buildings and political party gift distributions during official government ceremonies. A detailed COMFREL report of all cases in 2011 will follow in the course of 2012:

- The Provincial Governor of Svay Rieng acts beside his civil servant function as President of the Youth Working Group of the Cambodian People's Party. On 19th September he attended a welcoming ceremony for the new members of the CPP affiliated Cambodian Youth Association in Svay Rieng Province.
- The Deputy-Chairman of the Department of Central Security of the Ministry of Interior acts

⁸³ Ibid.

⁸⁴ Cambodian Law on the General Status of Civil Servants in the Kingdom of Cambodia, 26.10.1994

⁸⁵ Ibid.

⁸⁶ Cambodian Law on Political Party, 28.10.1997

beside his function as civil servant as President of the Cambodian Youth Association of CPP in Svay Rieng province.

- On 21st September, a working day, a government delegation delivered gifts provided by CPP to the Brigade Unit No. 525 in Samlaut District, Battambang Province.
- On 1st October, members of the Youth Working Group of CPP were honorable guests during the new-opening academic year and teacher gratitude ceremony in Prey Kdoch elementary school, Ang Snoul Kandal Province, presided over by the District Chief. During the ceremony, CPP logos were displayed on the school building.⁸⁷

3.3 Political Discourse

The previous year was characterized by sincere tensions and an increasing political polarization between the CPP and SRP. COMFREL finds this negatively affected the level-playing field for democratic competition. It widely silenced a constructive political discourse over domestic and international issues of importance for Cambodia and affected also voters and other political parties negatively, fearing possible repercussions, when they take side in the conflicts. The political discourse between SRP and CPP was hereby dominated by allegations, defamations, incitements and denunciations, threats, warnings and law suits. No attempts were made by CPP and SRP to resolve the conflicts. For COMFREL this raises doubts how the democratization process under these political circumstances can advance. Claims and counterclaims of both parties remain difficult to verify independently.

In January Prime Minister Hun Sen declared on national radio that he wants 'not just to weaken the opposition, but to make it die'⁸⁸. Legal proceedings instead of a resolution of the conflicts with SRP were taken against the SRP including the already mentioned stripping of parliamentary immunity in two cases (Mu Sochua, Chan Heng) and the loss of the parliamentary seat in case of party leader Sam Rainsy. The Supreme Court upheld in March also a ten years jail sentence in absentia for falsification of public documents and public disinformation against Sam Rainsy.⁸⁹ Moreover the Appeal Court upheld in October also a two years defamation sentence against him.⁹⁰ In December Hun Sen and an affiliated NGO network compared the SRP with Pol Pot.⁹¹ Legal proceedings were also underway against another SRP MP and some SRP members from Kandal Province. In May a SRP second deputy commune chief was detained on charges that he has initiated the destruction of private property after he led a protest related to a land dispute.⁹² Likewise his lawyer, a SRP member was alleged that he acted for the release of his clients not according to his profession and was charged with helping him to escape detention.⁹³ Moreover SRP MP Chan Cheng, who gained his parliamentary seat in Kandal, and previously had connected a killing of a SRP councilor in June with the councilors work for the SRP, was ordered for questioning by the provincial court of Kandal. However, Chan Cheng could only be questioned, when his parliamentary immunity is stripped. As already men-

⁸⁷ COMFREL Government Watch 2011 (Preliminary Results)

⁸⁸ Agency France Press (AFP): 'Cambodia tears up freedom to muffle dissent', 29.01.2011

⁸⁹ UN Human Rights Commission: A/HRC/16/48, p. 9

⁹⁰ Phnom Penh Post: 'Sam Rainsy appeals defamation sentence', 23.09.2011

⁹¹ Phnom Penh Post: "SRP 'acting like Pol Pot'", 29.12.2011

⁹² Phnom Penh Post: 'SRP Activist charged over protest', 19.09.2011

⁹³ Voice of America (VOA): 'Court Issues Summons for Opposition Attorney', 02.01.2012

tioned in this report the National Assembly subsequently stripped his immunity with the votes of the MPs of CPP. SRP MP Chan Cheng left shortly afterwards his country to stay in France.⁹⁴

The SRP countered CPPs law suits and the loss of the parliamentary immunity of some of its MPs with denunciatory campaigns, comparing Prime Minister Hun Sen with the ousted former Libyan President Muammar Gaddafi and claiming a similar revolution than the 'Arab Spring' could also take place in Cambodia.⁹⁵ Hun Sen countered with warnings that he would file defamation law suits against those, who continued to compare him with Muammar Gaddafi.⁹⁶ The SRP also upheld allegations against the Minister of Foreign Affairs, Hor Namhong for having led a Khmer Rouge prison camp named Boeung Trabek. Hor Namhong repeatedly denied this, saying he was himself a prisoner of the Khmer Rouge.⁹⁷ In June SRP alleged also a political murder of a SRP commune councilor in Kandal province. The police denied these claims in reporting that one suspect was arrested, who had admitted to have robbed the councilor and provided names of two other suspects. Some SRP activists including the SRP MP Chan Cheng however alleged a connection with the SRP councilors work, claiming he was a popular politician, who would have won a seat in the next communal elections.⁹⁸ An ADHOC human rights worker stated though that a throughout investigation is needed to determine the motives behind the killing. Until the end of 2011 no evidence appeared proofing a political motive.⁹⁹ In September SRP than published the so called 'Resolutions of the Fifth Party Convention' which claim to file 'criminal lawsuits against those current leaders responsible for crimes against humanity (K5 Plan in the 1980s), war crimes (1997 Coup d'Etat) and other heinous crimes (1997 grenade attack, 1998 repression) before international courts and independent courts in democratic countries'¹⁰⁰. The SRP also upheld allegations against the wife of Prime Minister Hun Sen, 'Bun Rany (...) of masterminding the assassination of Ms. Piseth Pilika, a renowned Cambodian artist (...)'¹⁰¹. CPP dismissed the allegations. No evidence was provided by SRP to proof the claims.¹⁰²

The destructive political discourse between CPP and SRP also affected other political parties, specifically the HRP, which is considered by CPP to be closer to the SRP. In July two HRP activists were arrested and charged with incitement after they had intended to distribute critical government leaflets. HRP claimed the leaflets were for internal use only. The two accused were then released on bail.¹⁰³ Moreover, during a HRP Party Congress, party leader Khem Sokha claimed that the CPP had tried to coerce and threatened him to support CPP, but he had refused.¹⁰⁴ In December HRP complained to the UN that CPP was blocking HRP meetings, threatening HRP members and preventing

⁹⁴ Radio Free Asia (RFA): 'SRP MP Chan Cheng fled to France', 28.12.2011

⁹⁵ Radio Free Asia (RFA): Sam Rainsy plans to sue Bun Rany Hun Sen for the murder of actress Pisith Pilika, 06.10.2011

⁹⁶ Prime Minister Hun Sen cited in Phnom Penh Post: 'Hun Sen Blasts SRP in Speech', 15.11.2011

⁹⁷ SRP: 'I reaffirm that Hor Namhong is a former Khmer Rouge Prison Chief', 13.10.2011, www.samrainsyparty.org, last retrieved on 31.12.2011; Hor Namhong: A Personal Reflection. Life under the Khmer Rouge, published in Phnom Penh Post, 17.02.2008

⁹⁸ Phnom Penh Post: "SRP claims 'political murder'", 03.06.2011

⁹⁹ Ibid.

¹⁰⁰ SRP: Resolutions of the Fifth Convention of the SRP held in Sept. 2011, www.samrainsyparty.org, last retrieved on 31.12.2011

¹⁰¹ Sam Rainsy: Accusation, 23.10.2011, www.samrainsyparty.org, last retrieved on 31.12.2011

¹⁰² Phnom Penh Post: 'The Unfortunate Case of Piseth Pilika', 13.01.2009

¹⁰³ The Cambodia Daily: 'Two HRP activists charged with incitement released on bail', Vol. 49, Issue 66, 7.09.2011

¹⁰⁴ Khmerization: 'Khem Sokha claimed he was threatened', 02.08.2011, khmerization.blogspot.com, retrieved on 04.01.2012

them from displaying party signs. The CPP led RGC dismissed the allegations as a public relation stunt, because HRP had raised the concerns to the UN Special Rapporteur for Human Rights.¹⁰⁵

A constructive political discourse was further undermined in 2011 with intra-party conflicts, conflicts among oppositional parties and allegations against CPP, that these conflicts were initiated by CPP to weaken the opposition.¹⁰⁶ But the fragmentations within other parties seem to have mainly been caused by intra-party conflicts and a fierce power competition among the oppositional parties. Prominent became in 2011 the defection of SRP MP, Mao Monyvann of Kampong Cham Province to the HRP. He had defected after ten years SRP membership accusing the SRP lacking democratic leadership. Fourteen other SRP members including a member of the SRP central committee and the SRP president for Pursat province also defected to HRP.¹⁰⁷ Moreover, in October SRP expelled two more high-ranking and four other party officials for alleged complicity with former SRP MP Mao Monyvan including SRP MP Tok Vanchan for Takeo Province and Senator Vann Sivoern.¹⁰⁸ Also FUNCINPEC was weakened by intra-party conflicts. 127 members from Kampong Cham defected to NRP in March after Party Secretary General Nhek Bun Chhay was alleged by them for mismanagement of party funds.¹⁰⁹ Besides, also conflicts between the oppositional parties HRP and SRP were reported. In December 2011 SRP accused HRP of faking resignation papers of SRP commune councilors in Pursat province to win supporters and threatened HRP with law suits.¹¹⁰ SRP also suspected HRP to collaborate with CPP in order to weaken their party.¹¹¹ Party leader Khem Sokha denied the claims and took instead a conciliatory approach towards SRP in saying, that 'MPs from HRP have planned to vote for SRP candidates, because at least it is better than voting for the ruling CPP.'¹¹²

4. Democratic Participation¹¹³

Cambodian citizens do enjoy by law extensive political participation rights in Cambodia's political system according to the constitution, related national law (Press Law 1995, Law on Peaceful Demonstrations 2009, Law on Political Parties 1997) and related international laws including the Universal Declaration of Human Rights and the United Nations International Covenant on Civic and Political Rights:

- The Cambodian Constitution states in Article 31: 'The Kingdom of Cambodia recognizes and respects human rights as enshrined in the United Nations Charter, the Universal Declaration of Human rights and all the treaties and conventions related to human rights, women's rights and

¹⁰⁵ Phnom Penh Post: 'Human Rights Party takes CPP beef to UN', 07.12.2011 and 'HRP says meeting blocked', 05.12.2011

¹⁰⁶ Sam Rainsy Party: CPP defeated for the second time in its attempt to buy out SRP activists, 30.09.2011

¹⁰⁷ Phnom Penh Post: 'SRP expels Mao Monyvann', 24.03.2011

¹⁰⁸ Phnom Penh Post: 'SRP expels one MP and one Senator', 11.10.2011

¹⁰⁹ Phnom Penh Post: 'FUNCINPEC Defections to Norodom Ranariddh Party', 28.02.2011

¹¹⁰ Phnom Penh Post: 'HRP Official accused of faking SRP resignations', 12.12.2011

¹¹¹ Phnom Penh Post: 'Khem Sokha denies cooperating with CPP', 01.06.2011

¹¹² Khem Sokha cited from radio Free Asia (RFA): 'HRP to vote for SRP candidates in senate elections', 09.12.2011

¹¹³ COMFREL does not have yet the capacities to monitor systematically all alleged violations of freedom of expression, assembly and association on an annual base except for cases related to elections. COMFREL however base its annual observations on democratic participation on verifiable secondary sources from national and international human rights organizations including monitoring reports from LICADHO, ADHOC, CCHR, Human Rights Watch, Amnesty International and UNHCHR. Moreover COMFREL does monitor women's political participation and also conducts surveys on citizen's political participation in the democratization process.

children rights. Khmer citizens are equal before the law, enjoying the same rights, liberties and duties regardless of race, color, sex, language, beliefs, religions, political tendencies, birth origin, social status, wealth or other situations. The exercise of personal rights and liberties by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and liberties shall be in accordance with the law'

- In Article 39: 'Khmer citizens have the right to denounce, make complaints, or file claims for reparations of damages caused by any breach of law by state and social organizations or by staff of those organizations. The settlement of complaints and the reparations of damages are of the competence of the courts.'
- In Article 41: 'Khmer citizens shall have the freedom to express their personal opinions, the freedom of press, of publication and of assembly. No one can take abusively advantage of these rights to impinge on dignity of others, to affect the good mores and custom of society, public order and national security. The regime of the media shall be regulated by law.'
- In Article 42: 'Khmer citizens shall have the right to create associations and political parties. This right shall be determined by law. Khmer citizens may participate in mass organizations meant for mutual assistance, protection of national realizations and social order.'

Moreover the Universal Declaration of Human Rights to which the Cambodian Constitution obliges stipulates an explicit right to political participation for Cambodian citizens in Article 21: 'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives'. Additionally the International Covenant on Civic and Political Rights, which the Royal Government of Cambodia has ratified, specifies these political and civic human rights as follows:

- Right to Freedom of Thought, Conscience and Religion (Article 18)
- Right to Hold Opinions Without Interference (Article 19)
- Right to Freedom of Expression (Article 19)
- Right of Peaceful Assembly (Article 21)
- Right to Freedom of Association (Article 22)

Despite these strong legal provisions, different international and national stakeholders, including also the UNHCHR have raised multiple concerns in the past and 2011 that these legal provisions are not yet fully implemented, are sometimes wrongfully interpreted or have been ignored altogether in some cases. A number of national civil society organizations suspected even that a systematic assault of the RGC on political participation rights is underway since 2010.¹¹⁴ Similar criticism was raised by international human rights organizations including Human Rights Watch, Freedom House and Amnesty International.¹¹⁵ The United Nations Special Rapporteur on Human Rights in Cambodia shared some of these concerns, though did not claim that alleged violations reflect a systematic as-

¹¹⁴ LICADHO: Freedom of Expression in Cambodia: The Illusion of Democracy, Phnom Penh December 2010. Joint Cambodian NGOs Report: Cambodia Gagged: Democracy at Risk? Report on Freedom of Expression in Cambodia, September 2010, www.sithi.org

¹¹⁵ Amnesty International: Annual Report 2011 – Cambodia, www.amnesty.org; Freedom House: Freedom in the World 2011 – Cambodia, www.freedomhouse.org; Human Rights Watch (HRW): World Report on Human Rights 2011 – Country Report Cambodia, January 2011, www.hrw.org

sault on political participation by the RGC: ‘Cambodia has made great strides in strengthening human rights in recent years in an environment of political stability, economic growth and continued generous international assistance and support. The challenge for the government is first of all to effectively implement its own laws. In this process, not only does it need to transform its international human rights obligations into national law but put these laws into practice, in order to foster a culture of pluralism and tolerance and move towards more inclusive, participatory and transparent decision-making processes on issues which have a direct impact on people’s human rights (...).’¹¹⁶

What have changed since 2010? COMFREL found that restrictions on political participation rights have still sincerely constrained the democratization process in 2011. COMFREL has observed that restrictions on political participation rights imposed in previous years continued in 2011, here specifically on the freedoms of expression and assembly. This led to self-imposed limitations of political participation of civil society organizations, oppositional political parties and citizens. The UN Special Rapporteur for Human Rights in Cambodia shares these concerns: ‘(...)Because of the fear of possible charges of defamation, disinformation and incitement against them, many people such as journalists, human rights defenders and political activists seem to be resorting to self-censorship.’¹¹⁷ The RGC also has not taken solid steps in 2011 to reform or apply legal provisions in a way that make them more favorable to a liberal interpretation of political participation rights in order to overcome allegations of a systematic crackdown on political participation rights. Also in regard to the political participation of women no significant changes took place in 2011. Women continue to lack representation in popular elected institutions and were also in 2011 specifically affected by restrictions on political participation rights. Moreover a COMFREL survey conducted in 2011 concerning citizen’s participation does show that the democratization process has not yet reached the grass-root level.

4.1 Freedom of Expression

Freedom of expression remained a sincere issue of concern in 2011. COMFREL found that this is mainly due to restrictive adaptation of laws on freedom of expression (New Penal Code 2010¹¹⁸). Restrictive measures limiting the freedom of expression included prison sentences and high fines for alleged defamations and incitements. In some cases convictions lacked a due process of law. To mention is also that SRP MPs right to freedom of expression continued to remain curtailed in 2011. Charges for defamation against SRP Leader and MP, Sam Rainsy and SRP MP Mu Sochua were upheld as mentioned earlier. Also SRP MP Chan Cheng lost his parliamentary immunity in 2011.¹¹⁹

Other cases in 2011 related mainly to prosecutions for the distribution of political leaflets. LICADHO reported that currently twelve Cambodians are jailed in relation to the distribution of political leaf-

¹¹⁶ UN: Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, A/HRC/15/46 September 2010

¹¹⁷ UN Press Release: Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia, Professor Surya P. Subedi, June 2011, www.sithi.org

¹¹⁸ An analysis of the new legal provisions is provided by LICADHO: The Delusion of Progress - Cambodia’s Legislative Assault on Freedom of Expression, Phnom Penh 2011

¹¹⁹ See p. 10 of this report

lets.¹²⁰ Some of the accused were charged with incitement to discriminate under the new Penal Code.¹²¹ Indeed the International Covenant on Civil and Political Rights (ICCPR), Article 20 permits restrictions on freedom of expression when they imply ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (...).’ However suspicions remained if all accused found guilty were really guilty and went through a due process of law or if restrictive interpretation of existing laws on political participation were actually used as a pretext to silence oppositional parties and civil society representatives critical of the government party. Following documented cases compiled from civil society reports and media illustrate the problematic:

- On 31st January six individuals were arrested for distributing leaflets in Phnom Penh and Takeo Province. The leaflets allegedly cursed and accused the government of allowing Vietnamese to kill Khmers and selling land to Vietnam. On 4th August, the court found five of the six accused guilty of incitement to commit a crime. Two of the men received two year sentences, and the other three received eighteen months. The court fined all five men two million riel (US\$487).¹²²
- On 18th March a motorcycle taxi driver was found guilty of incitement to discrimination by Phnom Penh Municipal Court for distributing anti-government leaflets and sentenced to one and a half years in prison and fined US\$ 750. The taxi driver claimed in court that he picked up a female passenger who distributed the pamphlets, which made ‘unfavorable comparison between government leaders and a race from another country’ without his knowledge.¹²³
- In June a World Food Program employee was released from prison, after he was convicted to six month prison time and a fine of US\$ 244 in 2010 for alleged incitement, because he had distributed information to co-workers from the government critical website KI-Media.¹²⁴
- On 14th July the appeals court upheld the lower court’s sentence against a LICADHO activist to two years in prison on charges of disinformation under Article 62 of the UNTAC criminal code, for allegedly distributing leaflets with three others, but changed the original charge from disinformation under the UNTAC code, to incitement under Article 495 of the new Penal Code. LICADHO criticized that probably the wrong person was charged and raised concerns about a lack of due process of law since the accused was charged on the base of the new penal code, which came only into effect after the alleged offense took place.¹²⁵
- In July two HRP activists were arrested and charged with incitement by the Provincial Court of Kampong Cham. The activists were accused to distribute critical government leaflets. HRP claimed the leaflets were for internal use only. The two accused were later released on bail.¹²⁶

Further suspicions of a systematic crackdown on political participation rights were raised by national and international stakeholders, when restrictions on freedom of expression targeted members of human rights organization, who had provided legal and social support for citizens in land disputes:

¹²⁰ LICADHO: The Delusion of Progress - Cambodia’s Legislative Assault on Freedom of Expression, Phnom Penh 2011, p. 17

¹²¹ Ibid, p. 11

¹²² Ibid, pp. 16-17; see also Phnom Penh Post: ‘Anti-Government Group Imprisoned’, 05.08.2011

¹²³ CCHR: Conviction of Moto Driver Sheds Light on Government Paranoia, 18.03.2011, www.cchr.org

¹²⁴ Phnom Penh Post: ‘UN Employee Walks Free’, 21.06.2011

¹²⁵ LICADHO: The Delusion of Progress - Cambodia’s Legislative Assault on Freedom of Expression, Phnom Penh 2011, pp. 3-4

¹²⁶ The Cambodia Daily: ‘Two HRP activists charged with incitement released on bail’, Vol. 49, Issue 66, Phnom Penh 7.09.2011

- In January the ADHOC coordinator of Kampong Cham Province was charged for defamation and fines of three million riels (US\$ 750) in a land dispute, which involves a company owned by the family of the Cambodian Minister of Mining and Energy.¹²⁷
- In November charges against two ADHOC activists and one journalist of Radio Free Asia for incitement to destroy private property in relation to a land dispute in Rattanakiri Province were upheld. The court proceeds on this case already more than three years.¹²⁸
- In November the police chief of Sandan District, Prey Lang Commune filed a complaint against two NGO activists and two community members of Prey Lang for alleged incitement and destruction of private property related to a land dispute.¹²⁹
- In December two community members were summoned to court in Kampot Province for alleged incitement of villagers against a development project, which led to a land dispute.¹³⁰

To suspicions of a systematic crackdown in 2011 contributed also incidents related to press freedom. The RGC was alleged by different stakeholders in 2011 to have censored government critical webpages, what government officials denied. Some webpages and blogs are known to be critical towards the government in using derogatory and populist language to underline their criticism of the government party (f. ex. KI Media and Khmerization). In January and February, the KI Media website was blocked by several Internet Service Providers. While some Internet Service Providers have since then unblocked these sites, other providers have continued to censor them.¹³¹ In another unrelated incident, at a press conference in January, the government's anticorruption head, Om Yetieng, ordered to confiscate reporters' voice recorders. A Cambodia Daily reporter had asked questions about the 1997 grenade attack on SRP, which was perceived as an insult.¹³² In January police detained temporarily a Phnom Penh Post photographer and deleted his photos. The photo journalist had taken pictures of a forced eviction at Boeung Kak Lake.¹³³ In October CCHR reported that a journalist of Radio Free Asia was charged with incitement related to a land dispute.¹³⁴

4.2 Freedom of Assembly

Similarly violations of the right to peaceful assembly in 2011 raised multiple concerns among national and international stakeholders.¹³⁵ During protests police often used excessive force including beating, shooting and arresting participants. Often military police was involved in breakups of demonstrations. In reaction some demonstrators turned violent like in the province of Kampong

¹²⁷ ADHOC: ADHOC Coordinator in Kampong Cham Sentenced, 25.01.2011, www.adhoc-cambodia.org

¹²⁸ ADHOC: ADHOC Human Rights Defenders Mr. Pen Bunnar and Mr. Chhay Thy Face Criminal Charges at Rattanakiri Provincial Court, 13.10.2011; Brief Update on the Case of Pen Bunnar and Chhay Thy, ADHOC Human Rights Defenders, 16.11.2011

¹²⁹ CCHR Condemns Criminal Complaint Against CCHR Staff members and Other Activists Campaigning To Save Prey Lang Forest, 16.11.2011

¹³⁰ CCHR: Judicial Intimidation of Community Activists in Kampot, 07.12.2011

¹³¹ CCHR: Situation of Human Rights and State of Democracy, Cambodia 2011, Phnom Penh 2011, p. 2

¹³² LICADHO: The Delusion of Progress - Cambodia's Legislative Assault on Freedom of Expression, Phnom Penh 2011, p. 3; CCHR: Situation of Human Rights and State of Democracy, Cambodia 2011, Phnom Penh 2011, p. 2

¹³³ Phnom Penh Post: 'Press Group Expresses Concerns', 24.01.2011

¹³⁴ CCHR: Human Rights Activists and Journalist Summoned to Court to Answer Two Year Old Charges, 12.10.2011

¹³⁵ Phnom Penh Post: 'Human Rights in Free Fall', 25.01.2011, www.phnompenhpost.com

Speu.¹³⁶ Moreover some peaceful demonstrations were prohibited. The number of violations reported by human rights organizations and media in 2011 hereby show that restrictions on peaceful assemblies are continuously growing since the number of land and natural resource conflicts within Cambodia had led to a drastic increase of public protests. According to ADHOC 256 protests were counted in 2011, which is an increase of 73 protests in comparison to 2010, when 183 protests were counted. Particularly in Phnom Penh protests have increased. The Phnom Penh City Hall released figures saying that the numbers of protests have doubled in 2011. In 2010 78 protests were staged, in 2011 already 152 protests.¹³⁷ Protests appear to be today the only way for citizens to make their voices heard, while government officials seem to be overwhelmed how to resolve the conflicts. Almost half of the protests concerned land disputes and housing rights, other protests concerned labor conflicts in the textile sector. The following alleged violations of the right to peaceful assembly are compiled from human rights and media reports and show the difficulties of government officials how to handle these protests (more cases related to women participation are described later):

- On 28th February police carrying riot shields and electric batons subdued another protest led by Boeng Kak Lake villagers. A reporter and villagers heard Daun Penh district deputy governor ordering authorities to beat ‘the protestors on that occasion’.¹³⁸
- On 3rd March a 53-year-old community representative was detained by national military police officers and environment officers in Koh Kong Province for a brief period, after he led his community in a peaceful protest against land clearing by a private company. The company had been granted a large concession overlapping with villagers’ land.¹³⁹
- On 29th April three villagers were beaten with guns during a violent attempt by approximately hundred Kratie military police officers to disperse a group of 2.000 villagers conducting a two-day protest to raise their concerns about land grabbing in Mondulkiri.¹⁴⁰
- On 10th May a 28-year-old community representative was beaten on his forehead with a gun while ten houses and properties belonging to hundred families were set on fire by a group of men led by military in Tang Samraong commune, Phnom Sruoch district, Kampong Speu.¹⁴¹
- On 7th July two Boeung Kak Lake community representatives were detained by police during a protest in central Phnom Penh. They were held overnight again, but no charges were ever filed. The two were released only after they agreed to thumbprint documents stating they would not conduct “unauthorized” public protests again.¹⁴²
- In August local authorities forcefully disbanded a workshop in Kampong Thom Province organized by the Cambodian Center for Human Rights (CCHR) and the Natural Resource Protection Group (NRPNG). Ten police officers armed with AK-47 rifles arrived at the workshop to stop the training session. The Commune Chief threatened to fine participants up to US\$500. The Ministry of Interior was requested to suspend the NGOs from operating in the province.¹⁴³

¹³⁶ Phnom Penh Post: ‘Villagers Take Up Weapons’, Phnom Penh 09.06.2011; see also LICADHO Press Release: LICADHO Condemns Violence in Kampong Speu, 10.06.2011, www.sithi.org

¹³⁷ The Cambodia Daily: ‘Phnom Penh Sees Doubling of Public Protests’, 16.02.2012

¹³⁸ Ibid., p. 28

¹³⁹ Ibid., p. 28

¹⁴⁰ Ibid., p. 28

¹⁴¹ LICADHO: The Delusion of Progress - Cambodia’s Legislative Assault on Freedom of Expression, Phnom Penh 2011, p. 28

¹⁴² Ibid., p. 29

¹⁴³ CCHR Press Release: Incitement Allegation and Suspension Threat against CCHR and NRPNG are without any basis in law and are further proof of crackdown on civil society, Phnom Penh 06.09.2011, see also CCHR, LICADHO, CLEC (Community Legal Education Center): District and Provincial Authorities Are Not Above the Law, Phnom Penh 09.09.2011, www.sithi.org

- On 5th August the Cambodian National Confederation of Laborers Protection sought permission for thousands to demonstrate rising living costs. Officials rejected the request, instead granting only permission for 200 people to gather at Phnom Penh's Freedom Park.¹⁴⁴
- On 18th August more than 106 villagers protesting the loss of land were detained briefly for distributing leaflets in Phnom Penh discussing the importance of preserving the Prey Lang forest. Large tracts of Prey Lang, a lowland evergreen forest in the provinces of Kampong Thom, Steung Treng, Kratie and Preah Vihear had recently been leased to rubber plantations.¹⁴⁵
- On 11th December estimated hundred villagers were allegedly threatened by soldiers brandishing AK-47s, while attempting to block a company from bulldozing their farms in Kratie province's Snuol district. A representative of 136 families in Snuol commune's Krasaing village, said villagers formed a human chain to prevent the company from clearing their cassava plantations, after the company had already bulldozed 1,000 square meters of land.¹⁴⁶
- On 12th December three protesters were shot in a clash with security guards during a land protest in Battambang Province, Phnom Proek District. The injured protesters filed a written complaint to the provincial court of Battambang demanding the arrest of a military police official.¹⁴⁷

4.3 Freedom of Association

Controversies surrounding the divisive draft laws on Non-Governmental Organizations and Trade Unions, the suspension of the operation of one NGO for five months after it was alleged to have incited citizens, the threatening of another NGO with similar charges and the arrest of one trade union leader on drug charges, had as well raised suspicions among some civil society representatives that a systematic crackdown on political participation rights was underway in the previous year. COMFREL shares some of these concerns, though restrictions on the freedom of association were less sincere than on the other freedoms reported above in the past year. Also the adaption of the controversial draft laws on NGOs and Trade Unions has been postponed to a yet undefined date.

Some concerns raised the case of the local NGO Sahmakum Teang Tnaut (STT), who had to suspend its operations in August after a written demand of the Ministry of Interior (Mol). STT supports citizens in a land dispute related to a railway development project. Mol explained in a vague formulation that the NGO needed to revise its leadership structure and statute. After criticism from civil society representatives Mol claimed that STT has wrongfully incited citizens to protest and do whatever they could to force a project suspension. Mol also accused foreign advocates to have incited citizens and proposed that foreigners should be banned from NGO advocacy work. STT could restart its operation only in January 2012. Another NGO, Bridges Across Borders Cambodia (BABC), who support STT's efforts was also threatened with suspension, though no action was taken by Mol.¹⁴⁸

¹⁴⁴ LICADHO: The Delusion of Progress - Cambodia's Legislative Assault on Freedom of Expression, Phnom Penh 2011, p. 27

¹⁴⁵ CCHR, LICADHO, CLEC: Communities Across the Country Pray for Prey Lang Forest and Management of Cambodia's Land As Authorities Clamp Down on Leaflet Distribution in Phnom Penh, Phnom Penh 18.08.2011, www.sithi.org

¹⁴⁶ Phnom Penh Post: 'Land Dispute – Threatened Villagers Protect Land', Phnom Penh 11.12.2011

¹⁴⁷ Phnom Penh Post: 'Shot Villagers Call for Arrest', 12.12.2011

¹⁴⁸ LICADHO: The Delusion of Progress - Cambodia's Legislative Assault on Freedom of Expression, Phnom Penh 2011, p. 25

Likewise concerns raised the case of a trade union leader, who was convicted for alleged drug distribution in a trial which according to LICADHO was ‘fraught with errors and blatantly unreliable testimony’¹⁴⁹. He was found guilty and sentenced to ten months in prison. Evidence presented at trial established that he was arrested just a couple of hours after he had announced plans to shift 1.000 members of his union from the factory supported Independent & Democratic Union Federation (IDUF) to the worker-led Coalition of Cambodia Apparel Workers Democratic Union. Because IDUF banned its factory union from advocating for labor rights, his union members had withdrawn from IDUF. LICADHO suspected that this was the real reason behind the conviction. The trade union leader was sentenced but released after the trial, since he already had served ten months pre-detention.

Positively in contrary was in 2011 that the divisive draft laws on Non-Governmental Organizations and Trade Unions have not been adopted after pressure from national and international stakeholders, though controversies about its provisions continue. It is feared by different stakeholders that the current proposed provisions in both laws are restrictive and could be used to crackdown on government critical NGOs and trade unions. The RGC has reacted positively on the criticism in increasing its consultations with civil society organizations and trade unions. Prime Minister Hun Sen announced last that the legislation might be postponed until after 2014 if necessary to reach a consensus. Also the draft law on Trade Unions was modified, last in November for the fourth time.¹⁵⁰

4.4 Women and Youth Political Participation

In the past years efforts have been increased by political stakeholders to overcome the underrepresentation of women in the democratization process. The RGC has initiated reforms to recruit more women into public services and political offices. Also all political parties have committed to introducing a gender policy and a quota system to promote women political participation. This commitment was shown last during a conference “On Women Moving Toward Progress” held in September 2011, where leaders of the elected political parties SRP, FUNCINPEC, NRP and HRP confirmed that they would encourage their party to nominate more women candidates for elections and prepare a plan within the party to seek more women support across the country for the upcoming communal elections and parliamentary elections. Moreover CPP, HRP and FUNCINPEC are to support female candidates in campaigns. They have to pay considerable lower financial contributions for the party campaign than male candidates. Other elected parties however have not yet decided on any specific policies of financial support for female candidates.¹⁵¹ COMFREL Gender Watch has reported about similar positive developments in the past in its previous annual democracy reports.¹⁵² Accordingly the status of women has also improved in Cambodia in 2011. But despite these first efforts the ranking in the Gender Inequality Index (GII) still shows that Cambodia remains with rank 99 out of 146 covered countries among the lowest ranked countries in Southeast Asia in terms of gender equality.

¹⁴⁹ Ibid., p. 6-7

¹⁵⁰ Cooperation Committee for Cambodia (CCC): Latest News on the Law on Associations and NGOs, 04.01.2012, www.ccc-cambodia.org; Phnom Penh Post: ‘Union Seek Changes to Labor Law’, 26.12.2011, www.phnompenhpost.com

¹⁵¹ COMFREL Gender Watch 2011 (Preliminary Results)

¹⁵² COMFREL: Annual Report ‘Democracy, Elections and Reform’, Phnom Penh March 2011

Only Myanmar, Lao and Indonesia are ranking lower than Cambodia. Vietnam ranks 48 and Thailand 69.¹⁵³ Women continue to remain underrepresented in popular elected institutions and the state administration and lack representation in the parliamentary political parties.¹⁵⁴

As of representation the current composition of the National Assembly also continued in 2011 to not represent Cambodia's population properly in terms of age and gender distribution among MPs. Women and youth continue to be disproportional underrepresented in the National Assembly. Currently only 26 MPs are women. This is only 21 percent of all MPs (currently 123), though women count for estimated fifty percent of Cambodia's population. Most women MPs are currently from CPP (15) and SRP (6). HRP, NRP and FUNCINPEC have so far not recruited any women MPs for the current fourth legislature. Also the youth remains disproportional underrepresented. Currently the majority of MPs in the fourth legislative are over fifty years old (total 103 MPs).

COMFREL found that a lack of women political participation in the democratization process is specifically reflected in the low participation of female MPs in deliberations of the National Assembly. COMFREL observed that in 2011 only five of the 26 female MPs expressed their opinion during plenary sessions. Only two female SRP MPs deliberated together total two hours and three minutes. From CPP, who has 15 female MPs, only three held speeches for only 23 minutes in the plenum. Positively in contrary was observed by COMFREL, that twenty female MPs were actively involved in field visits counting for 461 out of the total 2.318 field visits conducted by all MPs in 2011. Among the female MPS were six SRP MPs, who conducted 136 field visits and 14 CPP MPs, who had conducted 325 field visits.¹⁵⁵ However COMFREL also observed that women were in 2011 specifically affected by restrictions on the right for peaceful assembly and freedom of expression. A number of cases of excessive use of force by police forces during demonstrations, the prohibition of a women march on International Women's Day and a case of harassment of one female MP illustrate this restriction:

- On 8th March a permit for a rally on International Women's Day was not permitted by the responsible authorities, even though the Minister of Women Affairs was scheduled to speak. The Cambodian Women's Movement Organization (CWMO) had sought permission for a rally in central Phnom Penh to mark the 100th anniversary of the holiday. The government did not provide any reason for the denial, which was issued in a letter just one day before the planned event.¹⁵⁶
- On 27th March police violently dispersed a protest of more than 1,000 former workers at a garment factory in Phnom Penh, most of them women. The former workers were seeking a better severance package after the company had stopped operations a week earlier. A local Free Trade Union representative said security forces, made up of hundreds of police offers,

¹⁵³ UNDP: Human Development Index 2011 – Gender Inequality Index (GII), www.undp.org.kh

¹⁵⁴ The low ranking in the GII is reflected in the underrepresentation of women in popular elected institutions. Even though 53% of eligible voters in Cambodia are women, women representatives make up only 22% of MPs in the fourth mandate of the National Assembly. Currently only 26 MPs are women. Most women MPs are from CPP, followed by SRP, who has six women MPs. HRP, NRP and FUNCINPEC have no women MPs for the current fourth mandate. On local level only 16.8% of commune councilors are women in the second mandate. Moreover UNDP counted in 2011 only 34 percent women in public services.

¹⁵⁵ COMFREL Parliamentary Watch 2011 (Final Results)

¹⁵⁶ Human Rights Watch: Cambodia Annual Report 2012, www.hrw.org

had ripped down banners and hit workers with electric batons in order to disband the protesters.¹⁵⁷

- On 21st April estimated 100 lake residents were violently dispersed by the municipal intervention police force while staging a land dispute related peaceful protest in front of the Phnom Penh municipality building. Among the worst injured was an elderly woman who suffered from an open wound to the head, a female community representative who had her thumb broken, and a pregnant woman in her twenties who suffered a miscarriage due to beatings delivered to her stomach. Eleven community representatives were detained overnight.¹⁵⁸
- On 8th May a demonstration of 2.000 garment workers in Phnom Penh, most of them women, was violently cracked down by an estimated one hundred strong unit of military and police forces with electric batons, warning shots and beatings, injuring eight women. Police also reportedly road deliberately motorbikes into the crowd. Two protesters were arrested.¹⁵⁹
- On 20th July, at least two people were injured when about 100 police with guns, electric batons and shields dispersed 300 workers, most of them women, during a protest at a garment factory in Phnom Penh. Authorities had intervened because the protest caused traffic congestion.¹⁶⁰
- SRP MP Mu Sochua reported to have been threatened and harassed by local CPP authorities, when she educated people on the right to health care in Battambang Province.¹⁶¹

Youth political participation and engagement is still very low. Only twenty MPs are 49 years of age or below. The youngest parliamentarian is not younger than thirty years. Considering the present age structure of Cambodia's population, where 65.22 percent of citizens are younger than thirty years, the underrepresentation of the youth as well as women is significant.¹⁶²

There are only 163 youth commune councilors, equal to 1.43% of 11,353 elected councilors nationwide. In general, political parties in Cambodia have not paid attention to encouraging youths, especially girls, to become effectively engaged in politics, and have no specific policy for youth. There appears to have been no attention in political party platforms paid to the priority agenda in the area of youths: drafting and adoption of a national youth policy, education quality, problems of unemployment, military mobilisation, etc. However, Cambodian youths as first time voters in 2011 made up more than over 1.2 million voters. This estimate refers to those reaching the eligibility age for voting. Since 2008, the amount of new youth voters has increased by more than 300,000 per year. 72% of [youth] respondents could not state what democracy mean to them, of the rest who did offer a definition neither elections nor voting were mentioned (Youth Civic Participation in Cambodia, BBC world service trust baseline study November 2010). According to COMFREL's study in 2011 an almost equal percentage of women and men respondents registered to vote. The number of young voters (aged 18-30) registering was lower than that of adults.

¹⁵⁷ The Cambodia Daily: 'Police Crack Down on Garment Protest', 29.03.2011

¹⁵⁸ LICADHO: The Delusion of Progress - Cambodia's Legislative Assault on Freedom of Expression, Phnom Penh 2011, p. 28, see also CCHR Press Release: CCHR Condemns Beatings and Arrests of Lake Protestors, 21.04.2011, www.sithi.org

¹⁵⁹ LICADHO, CCHR, CLEC: Police Break up Demonstration by 2.000 Garment Workers: 8 injured, 2 arrested, 08.05.2011

¹⁶⁰ Phnom Penh Post: 'Two Injured in 'Brutal' Crackdown', 20.07.2011, www.phnompenhpost.com

¹⁶¹ COMFREL Parliamentary Watch 2011 (Final Results)

¹⁶² National Institute of Statistics (NIS): National Population Census 2008, Phnom Penh 2009, www.nis.gov.kh

4.5 Citizens Participation

COMFREL has conducted a survey on citizen's awareness interviewed (8,772 respondents) about political participation and democratic governance in 2011 in order to assess if the democratization process reach the citizens. COMFREL found that much more efforts must be taken by the RGC and civil society to increase citizen's participation in politics and to increase their political knowledge and democracy awareness in order to strengthen a participatory democratic political culture. Currently most citizens are widely unaware of their political rights, their influence on the political process and the role of government institutions, specifically the legislative, which actually is the institution representing and protecting the interests of the citizens. Moreover the current state of support for democracy among Cambodian citizens is alarmingly low, citizens are widely political passive and political frustrated. The survey results of 2011 show that the democratization process has not yet reached the grass-root level.

Currently only 54,1 percent of citizens believe that democratic elections change the country to the better, while 45 percent think elections do not. Moreover citizens show political frustration as 82,6 percent of respondents said they are not interested in political issues, while 17,4 percent responded to have little interest. Likewise weak is the political knowledge among citizens. Citizens interviewed find it difficult to identify what political activities are. Total 76,8 percent of respondents did not know what actually a political activity is. Only few associated with political activity the support of political parties (18,1 percent) or the participation in public meetings (3,9 percent). Also only 13,3 percent of citizens, do know the role and function of MPs. This means that citizens lack also awareness about their role as voters since they have been voting for MPs without knowing what MPs are doing.¹⁶³

Likewise the survey showed that citizens are political rather passive. On parliamentary level only nine percent, which is 0.9 percent of citizens, reported that they ever have personally contacted MPs while on communal level is 33.8 percent of citizens have ever attended a council meeting. Moreover citizens seem to be active on local governance level but be widely excluded from the national political process. Of the citizens who attended a communal meeting only 40,8 percent reported that councilors responded to their needs. Likewise on communal level only 34,2 percent of citizens said that commune councilors have communicated to solve commune problems, while 39,6 percent reported no such conversation was ever made and 25,9% did not know about such a conversation.¹⁶⁴ The survey found out that 98.8% of registered voters said that they planned to vote in the 2012 commune council election.

¹⁶³ COMFREL Survey 'Participatory and Democratic Governance', December 2011

¹⁶⁴ Ibid.

III. Conclusion, Recommendations and Perspectives

The democratization process has stagnated in 2011. Stagnation means that no substantial progress has been made to advance the democratization process. The Royal Government of Cambodia does not yet have fully implemented the constitutional and international provisions under the International Covenant on Civic and Political Rights. Democratic Governance is undermined by a lack of separation of power, of electoral reforms, of a level playing field for a genuine democratic competition as well as a lack of constructive political discourse on policy issues of importance for Cambodia. Moreover, political participation rights continued to be restricted, specifically the freedoms of assembly and expression. Also women continued to be underrepresented and citizens continued to lack democracy awareness and political knowledge which hampers the democratization process.

The COMFREL report found that a lack of democratic governance remained a major obstacle for the democratization process in 2011. The executive had continued to dominate the other government branches. The legislative and judiciary lacked independency and power to act as ‘checks and balances’ of the executive. The legislative continued to not function properly because of restrictive procedural rules and a lack of resources. The legislative power also remained constrained because of sincere tensions between the main opposition party, the Sam Rainsy Party (SRP) and the ruling government party, the Cambodian People’s Party (CPP). Similarly weak was the position of the judiciary. The RGC did not undertake any substantial reforms yet. A due process of law in legal proceedings and the independency of the judiciary were repeatedly put into question by different stakeholders. Likewise reforms to improve the transparency and accountability of the executive remained limited.

In regard to democratic elections this year’s annual COMFREL report found that demanded electoral reforms have not yet been met for the upcoming senate, communal and parliamentary elections in 2012 and 2013. This reforms concerns possible changes of the composition of the National Election Commission and the subordinated commissions on provincial and local level, the increase of National Assembly seats because of changes in population size of electoral constituencies and a more coherent electoral framework including comprehensive procedures for electoral complaints. The National Election Commission continued to lack confidence among political parties other than CPP. Also no seats were added to the National Assembly in 2011. This does not comply with the principle of equal and universal suffrage. Moreover no electoral reforms were initiated to reform the present electoral legal framework. The present law is regarded to be too complex and lack efficient complaint and enforcement mechanisms. Positively in 2011 however was that reforms of the annual voter registration have led to improvements in the annual voter registration exercise, though technical problems and allegations that the voter registration supervision was misused by commune chiefs and village chiefs continued to raise suspicions among some political stakeholders that the voter registration exercise was biased in favor of CPP. COMFREL therefore supports reforms of the annual voter registration system to overcome these persistent problems. In March 2012 COMFREL plans to produce findings on the degree of accuracy of the voter list and will than continue to discuss with other stakeholders potential reforms, which could improve the voter registration.

As to democratic competition the annual report found that despite a plurality of political parties the political party system has not developed to a genuine competitive system. The political competition remained characterized by an uneven level-playing field, which underlined like in previous years the dominance of the ruling CPP. Much more access to media and state resources allowed the government party to take advantages in the competition, with which no other political party could keep pace. Moreover, the political discourse in the previous year continued to be characterized by sincere tensions and destructive political polarizations between the CPP and SRP. This negatively affected the level-playing field for political competition and silenced a constructive political discourse on domestic and international issues of importance for Cambodia. Moreover it affected also voters and other political parties negatively, who had to fear repercussions in case they side in the conflict.

In regard to democratic participation the report found that these rights continued to be rigorously restricted, specifically the right on freedom of expression and assembly. This has not advanced the democratization process in 2011, but led instead to self-imposed limitations of political participation of civil society organizations, oppositional political parties and citizens. The RGC also has not taken steps in 2011 to reform legal provisions, which allow a more liberal hold of laws related to political participation in order to overcome suspicions among different stakeholders of a systematic crack-down on political participation rights. Likewise, despite some improvements, also women continued to remain underrepresented in the democratization process in 2011. They lack equitable representation in popular elected institutions, in the state administration and were more often affected by restrictions imposed on political participation, here specifically on the freedom for peaceful assembly. Moreover citizens continue to lack democracy awareness and political knowledge, which constrains the development of a democratic political culture and hence a sustainable democratization.

An important lesson learned from the democratization process in the previous year is, that democracy only can work, when political parties and civil society have trust in the current political system. However the results of the report of 2011 show that exactly this basic trust in the current political system is lacking. This was mainly reflected in the sincere polarizations between the SRP and CPP. This seems to be the major obstacle for advancing the democratization process. As long these two parties do not come along with each other and respect each other's function as government party and opposition party, it will also be in future difficult to proceed to a genuine democratization. The current political discourse forces the current government party CPP into the defensive, which is reflected in restrictions of political participation rights and a lack of reform of the parliamentary government system. Latter is reflected in a weak legislature and judiciary. On the other hand the opposition party is confirmed in its perception that the present system serves CPP to repress any power competition and possible policy alternatives by authoritarian means. This basically brings the political competition down to an enemy-friend dichotomy in which only one can be the political winner.

At present little optimism is in sight, how this destructive power competition between SRP and CPP could be ended. The result is currently a conflictual political party system that has not contributed to an advancement of the democratization process, but instead deepened the divisions between these political parties and with it also contributed to polarizations within the Cambodian society.

This is a development that actually many want to overcome after the experience of two civil wars and the Pol Pot Regime. In order to stop this destructive process CPP and SRP would need to reestablish and redefine their relations in a way, which allow both to take up their important functions in the current parliamentary government system while giving them as well as other political parties enough political freedom to develop interesting political platforms and alternatives, which could start a constructive political discourse over domestic and international issues of importance. This would be than a discourse in which citizens could participate without the fear of being on the wrong side, but instead are welcomed for their contributions and leads to the development of a genuine democratic public sphere necessary to advance the democratization process. CPP and SRP would have to take the first step towards such a constructive political discourse because they are the leading political elites, who have the capabilities to serve as a role model. Without changes of their positions it is unlikely that a genuine democracy can evolve. Instead the destructive power competition would most likely just continue in the same form as already known for many years.

COMFREL against this background recommends multiple reforms on the level of democratic governance, elections, competition and participation in order to advance the democratization process. Regarding democratic governance COMFREL believes that reforms to strengthen the parliamentary government system should enjoy first priority including foremost a strengthening of the legislative and judiciary. The report revealed that the legislature and judiciary are not yet a real 'check and balance' of the executive. In order to overcome this situation more financial and technical resources should be provided to the legislative and judiciary. Likewise the number of parliamentary seats should increase and independent institutions like the National Audit Authority and the Anti-Corruption Unit should be strengthened in order to improve the accountability of the executive. The transparency of the executive could be enhanced with the adaption of a law for access to information. This would oblige the executive to provide access to information in all public institutions.

In regard to democratic elections, COMFREL suggest that the present electoral regime for the senate should be reformed to increase political competition and participation of citizens. The present regime does not serve an increase of democratic representation for citizens on national level, but foster the dominance of political parties on national level successful in communal elections. Although these elections might serve the idea to create a semi-federal government structure, provincial assemblies to elect representatives for provinces would better serve this objective than commune councils. Commune councils only represent local interests, which should be represented on provincial level, but not on national level without an intermediary. Many democratic countries have indirect elections for the second parliamentary chamber, but the latter serve the representation of sub-national interests, not communal interests. COMFREL therefore recommends considering reforms.

In regard to democratic competition COMFREL believes that especially the access to electronic media should be improved for all political parties. The report showed that there is a bias in TV stations towards the government party, though in radio stations the bias is not so clearly to determine. Since Cambodia is a free market economy, restrictions will not be possible on print media, but there is space for a state initiated regulatory framework for electronic media. The United States could serve

here as a role model. The US Supreme Court has decided that private as well as state electronic broadcasters have obligations towards the public, because they are using a scarce resource: frequencies. Since frequencies are not unlimited like paper for print media and can therefore be considered as public good (a good which can be enjoyed by all citizens equally), the state has a right to oblige all broadcasters to guarantee equitable access to electronic media for all political parties. The decision of the US Supreme Court is known as 'Scarcity Doctrine'. In Cambodia this doctrine would mean to adapt a media law that oblige all electronic broadcasters to give political parties access under the same conditions in regard to pricing and broadcasting time. This means that all political parties would have to pay the same price for equal services provided by electronic broadcasters. Likewise COMFREL recommends a stricter implementation of the law on civil servants and political parties in regard to the use of state resources and status of civil servants in order to ensure the impartiality of police, armed forces and civil servants. This can improve the level-playing field for democratic competition. The report showed that in the current system, the government party can take considerable advantages from the use of state resources, though this is often legally questionable. Likewise other political parties than CPP should be encouraged to make use of their right for state financial support for election campaigns as guaranteed in article 28 of the law on political parties.

In regard to democratic participation COMFREL recommends to reform or at least change the practice of the implementation of current laws referring to political participation. The report showed that current laws are very restrictively implemented and give too much leverage to authorities to limit political participation. This also raised suspicions among stakeholders of a systematic crack-down on political participation by the RGC. The report has shown this specifically in regard to the freedoms of expression and assembly. In order to encourage citizen participation, these rights should be liberalized against the background that the lack of education and training in democratic practice might explain at least partly, why this rights sometimes are to excessively used by some without ethical or professional conduct or misused in the case of some authorities like for example police forces cracking down on protestors. The current legal practice definitely signals citizens that it is a better to keep away from participating in politics in order to avoid problems. But this attitude leads to the situation, that no democratic public can evolve and basically would reduce the democratization process to the consolidation of only a rudimentary electoral democracy, where citizens understand their political participation rights solely as right to vote in elections and nothing more.

COMFREL therefore also recommends considering if political education to democracy and human rights could not be introduced as an obligatory course subject in all secondary and higher education institutions. This is practice in many democratic countries in order to raise democracy awareness and political knowledge in order to sustain a democratic political culture. Against the background of COMFREL's survey on citizen participation which had shown a considerable lack of democracy awareness and political knowledge such a step can be considered as an outstanding progress for Cambodia. A better political education on democracy also can help to increase the participation of the youth in the political process in order to increase their political representation considering that the youth will be the one leading the political future of Cambodia. Moreover COMFREL believes that an increasing participation of women in the political process could help to overcome destructive po-

litical discourses and advance a more conciliatory democratization process. Currently it seems that the political process is overwhelmingly a destructive male competition for political power only.

COMFREL hopes these recommendations are constructive contributions for a more liberal and participatory political process, which will overcome the stagnation of the democratization process in 2011 and lead in coming years to a sustainable democratization in Cambodia. COMFREL acknowledges and supports all initiatives of the Royal Government of Cambodia which have the aim to foster democratization and continues to offer its full support to the RGC and other political and civic stakeholders in this process with COMFREL's over many years developed professional work in the field of democracy including education, consultancy and monitoring of the democratization process.

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