



# Democracy, Elections and Reform

**in Cambodia**

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# **Democracy, Elections and Reform**

## **Annual Report COMFREL 2015**

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## Acronyms

ACU	Anti-Corruption Unit
ADHOC	Cambodian Human Rights and Development Organization
AEC	ASEAN Economic Community
ASEAN	Association of Southeast Asian Nations
BSDP	Beehive Social Democratic Party
CBOs	Community Based Organizations
CCC	Constitutional Council of Cambodia
CCHR	Cambodian Centre for Human Rights
CCIM	Cambodian Centre for Independent Media
CDRI	Cambodian Development Research Institute
CEOs	Chief Executive Officers
CIDP	Cambodian Indigenous Democracy Party
CLP	Cambodian Liberal Party
CNP	Cambodian Nationality Party
CNRP	Cambodian National Rescue Party
COMFREL	Committee for Free and Fair Elections
CPP	Cambodian People's Party
CSOs	Civil Society Organizations
CYP	Cambodian Youth Party
DMP	Democratic Movement Party
ERA	Election Reform Alliance
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia
GDP	Grassroots Democratic Party
HRW	Human Rights Watch
ICCPR	International Convention on Civil and Political Rights
IFES	International Foundation for Election Systems
KAPP	Khmer Anti-Poverty Party
KEDP	Khmer Economic Development Party
KNUP	Khmer National United Party
KPP	Khmer Power Party
KSP	Khmer Solidarity Party
KUGNP	Khmer United Great Nation Party
LANGO	Law on Associations and Non-Governmental Organizations
LDP	League of Democracy Party
LEMNA	Law on Elections of Members of the National Assembly
LICADHO	Cambodian League for the Defense and Promotion of Human Rights
MoI	Ministry of Interior
MPs	Members of Parliament
NA	National Assembly
NACC	National Anti-Cybercrime Committee
NEC	National Election Committee
NICFEC	Neutral and Impartial Committee for Free and Fair Elections
RAJP	Royal Academy for Judicial Professions
RCAF	Royal Cambodian Armed Forces
RDP	Republic Democratic Party
RGC	Royal Government of Cambodia
TIC	Transparency International Cambodia
UN	United Nations
UYFC	Union of Youth Federations of Cambodia
YRDP	Youth Development Resource Centre

# 1. Introduction

Since 2009, the Committee for Free and Fair Elections (COMFREL) has extended its observations and analysis of Cambodia's electoral process to an annual analysis of the state of democracy in Cambodia. The research reports titled *'Democracy, Election and Reform'* generate empirical data and provide comprehensive analysis of Cambodia's political development. To reach a wide audience of national and international stakeholders, the reports are published in print and online editions. COMFREL's research is hereby guided by the political vision as proclaimed in the preamble of Cambodia's constitution *'to re-build the country and once again become an "Oasis of Peace" based on the system of a liberal multi-party democracy, to guarantee human rights, to ensure the respect of law, to be highly responsible for the destiny of the nation forever evolving toward progress, development and prosperity'*<sup>1</sup>.

The leading research questions for each annual research report are: Is **Cambodia's political development progressing towards a consolidated democracy? And what needs to be done to achieve this political vision?** COMFREL defines a consolidated democracy as a mature democracy where it is unlikely, without an external political shock that the political system reverts back to authoritarian rule. A mature democracy is defined as a political system in which political institutions and processes are effective to ensure responsiveness and accountability of the executive, the rule of law, peaceful power transitions, political pluralism, the protection of political and civil rights of its citizens, free and fair elections and the development of a democratic political discourse leading to a democratic political culture.

Based on this definition, COMFREL developed a qualitative roster of democracy indicators to examine if Cambodia's political development progressed toward a consolidated democracy in 2015. They relate to earlier annual reports allowing for comparisons with past analysis. The democracy indicators are defined as 'Democratic Governance', 'Freedoms and Democratic Space' and 'Democratic Elections' and are examined as follows: Democratic governance refers to the question, are Cambodia's political institutions and processes effective, to ensuring responsiveness and accountability of the executive, the rule of law and peaceful power

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<sup>1</sup> Preamble of the Cambodian Constitution, Unofficial English Translation Version Supervised by the Constitutional Council of Cambodia, Phnom Penh March 2010.

transitions? Freedoms and democratic space refer to the questions, do Cambodia's political institutions and processes ensure political pluralism defined as democratic space for a variety of forms of political participation and the development of a plural political party landscape? Do they ensure the protection of political and civic rights of its citizens and the development of a democratic political discourse leading to a democratic political culture? A democratic political discourse is defined as a political communication process characterized by mutual respect, tolerance, peaceful conduct and compliance to formal democratic rules. The indicator democratic elections refers to the question, do Cambodia's political institutions and processes ensure free and fair elections?

Empirical data generated for this report are based on primary and secondary research findings from COMFREL's Advocacy and Monitoring Units 'Government Watch', 'Parliamentary Watch', 'Media Watch', 'Election Watch', 'Gender Watch', the 'Access to Information NGO Working Group', and the Election Reform Alliance (ERA). COMFREL adopts a mix of qualitative and quantitative research methods. This includes sample surveys, observation and statistical analysis of voter and media monitoring data, qualitative interviews, field observations and literature reviews. The latter includes the collection and examination of research results, studies, and reports of diverse national and international stakeholders involved in Cambodia's democratization process, as well as reports from reputed national and international media.

To provide a comprehensive analysis, the report introduces the readers first to the political context in 2015. The report then analyzes the democracy indicator 'Democratic Governance', which includes: (a) an evaluation of the executive responsiveness and accountability; (b) an evaluation of the legislative process and (c) an evaluation of the independence of the judiciary, and law enforcement (d) an evaluation of the political neutrality of military and police forces. It follows an evaluation of the democracy indicator 'Freedoms and Democratic Space', which includes: (a) the freedoms of expression and access to information, (b) the freedom of assembly, (c) the freedom of association, (d) an evaluation of developments of Cambodia's political party system and political competition, (e) an evaluation of public political discourses and campaigns and (f) an evaluation of women and youth political participation. The report finally assesses the democracy indicator 'Democratic Elections' which includes an evaluation of recent reforms of electoral laws, the new computerized voter registration system, and the restructuring of the

National Election Committee (NEC). The report closes with recommendations on how to improve Cambodia's democracy.

## **2. Executive Summary: *Renewed Setbacks for Cambodia's Democracy***

➤ Politically motivated physical assaults and legal harassments with unconstitutional action against the opposition including the court's decision to issue an arrest warrant for CNRP President Sam Rainsy, the removal of Mr. Kem Sokha as the parliament's vice president, the arrest of opposition Senator Hong Sok Hour and earlier in the year, the arrest of 11 CNRP activists, who were charged and imprisoned in circumstances that call into serious question the impartiality and independence of the judiciary were major setbacks for Cambodia's democracy in 2015.

➤ Democratic governance made only limited progress despite notable reforms of the legislative and the responses of the executive, in particular the prime minister, to the electoral gains of the opposition in the national election 2013. The legislative reform was however severely disrupted after the politically motivated physical assaults and legal harassments against the opposition. The executive has strengthened its responses to gain more public support. According to COMFREL's voter's score card on government performance, the number of participants dissatisfied with the government decreased from 55 percent in 2014 to 50 percent, while the number of participants partly satisfied increased from 35 percent to 40 percent, whereas the percentage of participants satisfied with the performance of the government remained the same. However, executive accountability has not improved. Corruption remains endemic in Cambodia and appears to be on the rise. In addition, the judiciary continues to lack independency and impartiality and the military and law enforcement interfered into the political process.

➤ Freedom of expression and access to information did not improve. Despite recent rapid internet penetration in Cambodia, threats to both freedoms remain. The executive responded to the new technological development with stricter controls of the internet including harassment, charges and imprisonment of citizens who express anti-government opinions online. At the same time the executive continues to hold onto its dominance over and control of traditional media (TV, radio, print media). Press freedom also remains under threat. Access to public information has not yet significantly improved.

➤ Freedom of association is under threat. The new law on associations and non-governmental organizations (LANGO) requires associations and non-governmental organizations (NGOs) to be political neutral, but the provisions contravene the Cambodian constitution violating article 35 which states that "Cambodian citizens have the right to active participation in political, life", article 41 Cambodian citizens have freedom of expression; and article 42- freedom of association. Even though no repercussions against NGOs and associations leading to their prohibition or dissolution have been reported, concerns were raised that the new LANGO may provide the executive with a tool to restrict freedom of association of NGOs and associations critical of government performance.

➤ Freedom of assembly is still restricted by the authorities and assaulted by third parties in cooperation with the same authorities, but crackdowns by security forces were less violent than in 2014. Of specific concern is the plight of eleven CNRP officials and supporters who were prosecuted and imprisoned for 'insurrection' following their involvement in protests, which turned violent in July 2014. Some civil assemblies were again countered with force by security services.

- Despite changes to Cambodia’s party system after the last elections, recent political developments do not indicate that Cambodia’s party system is developing towards a competitive multi-party system, even though political pluralism has increased with the formation of ten new political parties.
- The post political-crisis agreement and an agreed code of conduct contributed to the improvement of political dialogue, but did not prevent destructive political discourses and campaigns in 2015. Such discourses continue to obstruct the development of a genuine democratic political discourse.
- Youth and women continue to lack the means for political participation, and are underrepresented in national and local elected bodies. The executive has fallen short of achieving Gender Millennium Development Goals. Youth is underrepresented in national and local elected bodies. Recent surveys indicate that youth voter turnout is below the average.
- Substantial reforms of electoral laws and electoral bodies have been undertaken. The reforms should increase confidence in the electoral process and help to prevent future electoral conflicts, but the reforms only partially fulfilled this expectation. A number of provisions in the new election laws appear to worsen prospects for an improved electoral process. The formation of a new National Election Committee and respective laws are a significant improvement, but concerns over the impartiality of the new body and a lack of transparency in the selection of officials especially the NEC secretary general. The introduction of a new modernized voter registration system could improve the electoral process, but it is too early to determine how effective the outcome of this reform effort will be.

### **3. Political Context 2015**

Following the *‘Agreement on a Political Resolution between the Cambodian People’s Party and the Cambodian National Rescue Party’*<sup>2</sup>, Cambodia’s political development appeared to be moving towards a more mature democracy. The agreement between the opposition and government promised that *‘both parties agree on a political resolution, working together within the assembly to solve all national problems in accordance with the democratic principles and the rule of law’*<sup>3</sup>. Legislative and electoral reforms were initiated in the second half of 2014 and the first half of 2015 suggesting improvements for the democracy indicators ‘Democratic Governance’ and ‘Democratic Elections’. In addition, the initiation of a ‘culture of dialogue’ promised an end of the political conflicts between the CPP and CNRP after the national election in 2013, and seemed to provide guidance for the development of a democratic political

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<sup>2</sup> Keen Languages Interpreter: Translation of ‘Agreement on Political Resolution between Cambodian People’s Party and Cambodia National Rescue Party’ 22nd July 2014, [www.phallika.info](http://www.phallika.info)

<sup>3</sup> Ibid.

discourse which could lead in the long-run to the development of a genuine democratic political culture. It also seemed that the CPP responded to CNRP reform demands.

By the second half of 2015, however, this perception and related expectations were proven to have been premature. Judicial and physical harassment against the CNRP severely undermined the so-called ‘culture of dialogue’ and the reform process. In July, eleven CNRP officials and supporters were prosecuted and imprisoned for allegedly leading or participating in an insurrection movement, one year after their involvement in protests, which turned violent in 2014. In August, Hong Sok Hour, a Sam Rainsy Party (SRP) Senator was arrested and charged for posting alleged forged documents related to a 1979 border treaty between Cambodia and Vietnam, on his Facebook page, and incitement. In October, CNRP Vice-President Kem Sokha was removed from his position as First Vice-President of the National Assembly. The action followed protests in front of the National Assembly and outside his private residence by CPP supporters calling for his removal. After the main protest had finished, two CNRP lawmakers were dragged from their cars outside of the National Assembly building and beaten, one severely, by individuals some of whom it was believed were members of the Prime Ministers body guard unit. Security forces on the spot did not intervene in the protests or attempt to stop the attack. Photographic and video evidence of the event circulated widely on social media. However, the perpetrators were only detained after an intervention by the prime minister who called for their arrest. In November, opposition leader Sam Rainsy was charged with defamation and an arrest warrant issued. Two more charges against him followed in December, including a defamation charge and charges of involvement in the earlier forged document case brought against the SRP Senator. Sam Rainsy was out of the country when the arrest warrant was issued and despite promises to return to Cambodia to face the dubious charges, he remained, once again in self-imposed exile. For those expecting progress in the development of a mature democracy 2015 ended in disappointment.

#### **4. Democratic Governance**

Democratic governance made only limited progress despite notable reforms of the legislative and the responses of the executive, in particular the prime minister, due to the electoral gains of the opposition in the 2013 national election. However, the legislative reform process was severely disrupted after the politically motivated physical assaults and legal harassment against the opposition. The judiciary continues to be used as a tool by the ruling CPP proving once again that the judiciary

lacks independence and is unable to ensure a due process of law. Current legislative and judicial reforms appear to be insufficient for a genuine separation of powers as foreseen in the constitution. Likewise, executive accountability has not improved. Corruption remains endemic in Cambodia and appears to be on the rise. In addition, military and police forces continue to interfere in the political process.

#### **4.1 Executive Responsiveness and Accountability**

Executive responsiveness improved due to the electoral losses incurred by the CPP in the 2013 elections. In order to regain the political initiative and to avert further criticism of government performance and behavior, the CPP leadership accommodated CNRP demands and initiated some reform programs. Among the CNRP demands were procedural and structural reform of the National Election Committee (NEC), reforms of electoral laws, reform of the voter registration system and the legislature and the legislative process. These procedural reforms will be examined in later chapters, ‘The Legislative Process’ and ‘Democratic Elections’. The RGC accommodated also policy proposals made by the CNRP during the 2013 election campaign. More positively, the strengthening of the CNRP has forced the ruling CPP to engage with the CNRP on policy reform to regain the political initiative. Even though the CPP denied that they responded to CNRP reform demands, the similarities between the CNRP and some new RGC reforms, though not all, appear to prove the opposite.

At least three RGC policy reforms in 2014 and 2015 can be traced back to CNRP reform demands during their campaign for the national election in 2013 and previous campaigns. This included the CNRP promise to raise the minimum monthly wage from 128USD to 150USD and that of civil servants from 125USD to 250USD when they win the elections and form the government.<sup>4</sup> In October 2014, the RGC announced that they had decided that the minimum monthly wages of civil servants will be gradually increased from the current 125USD to 250USD per month by the year 2018.<sup>5</sup> In addition, in August 2015 the RGC announced a decision to raise the minimum monthly wages of 700.000 garment workers from 128USD to 140USD by January 2016. The CNRP promise

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<sup>4</sup> Cambodia Daily: Opposition Outlines Vision at Congress, 08.04.2013

<sup>5</sup> Phnom Penh Post: Gov’t Announces Wage Raise for Civil Servants, 24.10.2014

to raise the salaries to 150USD was not met.<sup>6</sup> The RGC also finally reacted to a decade old CNRP demand to hand over full government control of ticket sales from the main tourist site at Angkor Wat. In November 2015, the RGC announced that all ticket sales for Angkor Wat will be solely controlled by the RGC, starting in January 2016.<sup>7</sup> Between 1999 and 2015 a private company, SOKIMEX owned by Sok Kong, a former CPP lawmaker, was responsible for the ticket sales and received in return for its services a publically unknown share of the ticket sales revenue. The details of the contract with SOKIMEX were never made public leading to CNRP allegations that a private company benefits from public revenues. Suspected irregularities surrounding the ticket sales at Angkor Wat are outlined in a previous report.<sup>8</sup> In response to a public perception that the CNRP has attracted more young voters, the ruling CPP became more pro-active in 2015 in initiating reform programs targeting the youth. According to UN data, 52 percent of Cambodia's population in 2015 is below the age of twenty five.<sup>9</sup> The RGC is under considerable pressure to reform and develop policies that meet the educational and employment needs of the youth. Currently youth prospects in the education sector and job market are limited. Only 41 percent of children enrolled in lower secondary schools and 27 percent of children enrolled in upper secondary school have completed secondary education. Cambodia has also the lowest completion rate in secondary education and the lowest enrolment rate for higher education in the ASEAN region <sup>10</sup>Cambodia's education is widely perceived to be of low quality and does not meet the skill demands of the labour market. A recently released exploratory study entitled *'Cambodia Education 2015 - Employment and Empowerment'* of the Cambodian Development Research Institute (CDRI) warns: *"With more than 50 percent of the country's population in the 0-24 year age group, such a configuration of skill gaps and mismatches provides a situation that is ripe for large-scale youth unrest and its potential social and political fallout"*.<sup>11</sup> The ruling CPP has responded to higher education needs introducing a reform package of the education sector. In 2014, a Policy on Higher Education Vision 2030 and a National Qualification Framework and an Education Strategic

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<sup>6</sup> Radio Free Asia (RFA): Cambodia Raises Minimum Wage for Garment Workers But Unions Remain Unhappy, 10.08.2015

<sup>7</sup> Cambodia Daily: Government To Take Control of Ticketing at Angkor Wat, 07.11.2015

<sup>8</sup> COMFREL Annual Report 'Democracy, Election and Reform' March 2014. p. 17

<sup>9</sup> United Nations Department of Economic and Social Affairs - Population Division: World Population Prospects: The 2015 Revision, <http://esa.un.org/unpd/wpp/> accessed on 23<sup>rd</sup> January 2016

<sup>10</sup> Asian Development Bank (ADB)/International Labour Organization (ILO): Cambodia – Addressing the Skills Gap – Employment Diagnostic Study, Mandaluyong City, Philippines 2015

<sup>11</sup> CDRI: Cambodia Education 2015 – Employment and Empowerment, Phnom Penh March 2015. p. 20

Plan 2014-18 within the framework of the National Strategic Development Plan 2014-18 was approved.<sup>12</sup>

Other reforms initiatives indicate that the government has strengthened its efforts to gain more public support. According to COMFREL's voter's score card government performance survey conducted in 24 provinces through focus group discussions, the number of participants dissatisfied with the government decreased from 55 percent in 2014 to 50 percent, while the number of participants partly satisfied increased from 35 percent to 40 percent, whereas the percentage of participants satisfied with the performance of the government remained the same. The changes in 2014 however, do not indicate a major shift in public perception of government performance. When looking at the scores provided for each of the four sectors of government performance examined, COMFREL found in the first sector on national defence and security and public order that only 28 percent of participants were satisfied, 58 percent partly satisfied and 13 percent not satisfied. In the second sector on improvement of public administration, decentralization and deconcentration, law and justice, and anti-corruption activities, 26 percent of participants were satisfied, sixty percent were partly satisfied and 13 percent not satisfied. In the third sector, economic development, 22 percent of participants were satisfied, 66 percent partly satisfied and ten percent not satisfied. In the fourth sector on development of education, health, labour, culture and social affairs, 27 percent of participants were satisfied, 62 percent partly satisfied 62 and nine percent not satisfied.<sup>13</sup>

According to the perception of participants the RGC only fulfilled six out of a total sixteen items on its political platform. These include an annual seven percent economic growth rate, an annual poverty reduction rate of one percent, the halting of economic land concessions, a new transportation policy, an increase in foreign tourists, and the creation of a new national employment policy.<sup>14</sup> The RGC failed according to the findings of the survey to fulfil seven items on its political platform which include: fishing, land titling, housing policy, people's access to clean water, village electricity supplies, secondary school construction and the export of one million tons of rice. Three other items are perceived by participants to be implemented but not yet fulfilled including forest

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<sup>12</sup> Ibid., p. 35

<sup>13</sup> COMFREL: Press Release – Assessment and Voter's Score Card On the Second Year Fulfilment of Political Platform of the Fifth Mandate Government', 23.02.2016

<sup>14</sup> Ibid.

protection and maintenance, retirement allowances in the private sector and improvement of rural roads.<sup>15</sup>

## 4.2 The Legislative Process

The legislative has gained political power following the political agreement of July 2014. As outlined in the previous COMFREL annual report the CNRP and CPP reached an agreement to share equally the chairs of the ten parliamentary commissions and provide the CNRP with the post of first Vice-President of the National Assembly. The opposition seemed therefore for the first time since 1998 empowered to exercise effective scrutiny and legislative functions.<sup>16</sup> The holding of questioning sessions, public consultations and the establishment of opposition led parliamentary commissions and public workshops appeared also to have facilitated a more transparent and accountable legislative process. However, major shortcomings remain in regard to public consultation mechanisms for draft laws and investigative powers for parliamentary commissions chaired by the CNRP. Moreover, the legislative was considerably weakened after the politically motivated physical assaults and legal harassment directed against the opposition (see details in the next chapters). The CNRP did not attend the National Assembly for two months before returning on 17<sup>th</sup> December to resume their work.<sup>17</sup>

Before the political crisis COMFREL Parliamentary Watch found that parliamentary commissions working activities increased in 2015, and parliamentary debates in plenary sessions of the National Assembly (NA) were livelier. A total of 43 lawmakers expressed opinions leading to twenty hours of parliamentary debates. A significant increase when compared with 2014, when only 23 lawmakers expressed their opinion and, only twelve hours of debate were counted by COMFREL. Among the 43 lawmakers expressing their opinion, 21 were from the CPP and 22 from the CNRP indicating that the CNRP was allocated even a bit more speaking time during plenary sessions than the CPP. In regard to activities of parliamentary commissions, COMFREL recorded 66 activities of CNRP led parliamentary commissions and 39 activities by the CPP commissions. In total, 105 activities were recorded, which included meetings and questioning of government ministers, field visits and meetings with local authorities, citizens and civil society representatives. A total of eight ministers were summoned for questioning. With regard to lawmaker visits to the field COMFREL recorded a

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<sup>15</sup> Ibid.

<sup>16</sup> COMFREL: Annual Report Democracy, Elections and Reform 2014, March 2015. pp. 9 - 13

<sup>17</sup> Phnom Penh Post: CNRP Ends Boycott, Makes Quiet Return, 17.12.2015

total of 1004 by 91 lawmakers making 11 visits each. CNRP lawmakers were more active in field visits than the CPP. A total of 52 CNRP lawmakers conducted 774 field visits, on average 15 visits per lawmaker. 49 CPP lawmakers made a total of 230 field visits, on average 5 visits per lawmaker. Although not all field visits were reported to the NA secretariat, it appears that the CPP left the responsibility for political campaigns in 2015 to government and party officials than to its lawmakers.<sup>18</sup>

Despite these positive developments before the political crisis, the legislative process continued to lack effective public consultation mechanisms and investigative powers for parliamentary commissions chaired by the CNRP, in particular the anti-corruption commission (see page 13-14). Also a number of controversial laws were approved in 2015 without providing concerned civil society organizations enough time for public consultations. Two major controversies surrounded the approval of the new '*Law on Associations and Non-Governmental Organizations*' (LANGO). The law was approved in July with a CPP majority vote despite a boycott by the CNRP, alongside appeals by a number of international and national stakeholders to continue a public consultation process and improve a number of controversial provisions of the new law. Although a National Assembly workshop was held on the new law shortly before its adoption, civil society organizations and the CNRP boycotted the event claiming it was a meaningless formal procedure (more details on the new LANGO can be found in chapter 'Freedom of Assembly and Association').<sup>19</sup> Also, controversial was the adoption of the two new electoral laws on the Organization and Functioning of the National Election Committee (NEC), on the Election of Members of the National Assembly (LEMNA) and on the Election of Members of Commune Councils (LEMCC). Again, insufficient time was provided for public consultation. The public release of the drafts laws and the organization of a public workshop took place only few days before its adoption. A total of sixty CSOs again boycotted the workshop. All new election laws were unanimously adopted by CNRP and CPP lawmakers (for details on the new laws see the chapter on, 'Democratic Elections').<sup>20</sup>

The two posts for the first Vice-President of the National Assembly and Minority Leader have been held vacant after the CNRP decided not to fill the posts. Kem Sokha continued to act as leader of the parliament opposition group and held meetings with Minister of Interior Sar Kheng the leader of

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<sup>18</sup> COMFREL: Press Release – Statement on National Assembly and Parliamentarian Watch for 2<sup>nd</sup> Year of the 5<sup>th</sup> Mandate, 18.02.2016

<sup>19</sup> Phnom Penh Post: Assembly Passes LANGO, 14.07.2015

<sup>20</sup> Phnom Penh Post: Election Laws Sail Through, 20.03.2015

the ruling party parliament group. Also, new internal regulations of the National Assembly granting more power to the parliamentary commissions to question ministers were adopted by CPP lawmakers in 2015, without CNRP parliamentarians who boycotted the vote. The new rules had been negotiated with and supported by the CNRP before the crisis. On 28<sup>th</sup> November, both parties also agreed to share the position of the NA spokesperson which had up until that point had always been occupied by the CPP and perceived to be biased. One NA spokesperson is now nominated by the CNRP, one by the CPP and one by the NA Secretariat.<sup>21</sup>

### **4.3 Independence of the Judiciary and Law Enforcement**

#### **4.3.1 The Judiciary**

Irrespective of the constitution which requires the separation of powers between the judiciary and the executive, the judiciary remains under the firm control of the executive. This has been examined in previous annual reports.<sup>22</sup> The perception that the judiciary is used as an instrument by the ruling CPP to weaken the opposition has been strengthened in 2015. In total, fourteen CNRP officials and supporters were charged, prosecuted and imprisoned under questionable and dubious legal circumstances. Sam Rainsy remained in exile to avoid imprisonment. The arrests of CNRP officials and supporters came only a few days after executive orders by prime minister Hun Sen.<sup>23</sup> International and national human rights organizations condemned the RGC actions. The European Parliament adopted a resolution expressing concerns over the judicial repercussions against the CNRP.<sup>24</sup>

Fourteen CNRP members were arrested and charged for allegedly leading or participating in an insurrection movement one year after their involvement in a protest in Phnom Penh at a public square in July 2014, which had turned violent. During the protest 37 security guards and at least six protestors were injured after security guards had repeatedly committed violent acts against demonstrators in preceding protests. But none were ever charged for acts of violence. Eleven CNRP

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<sup>21</sup> Cambodian Daily: National Assembly Votes on Two New Measures; CNRP Absent, 31.10.2015; Phnom Penh Post: CNRP Gets Their Say in the National Assembly, 24.11.2015

<sup>22</sup> COMFREL Annual Report 'Democracy, Election and Reform', March 2015. pp. 13-15

<sup>23</sup> Phnom Penh Post: Sam Rainsy Faces Arrest Warrant, 14.11.2015; Cambodia Daily: Senator Arrested, Charged on Hun Sen's Orders, 17.08.2015

<sup>24</sup> Cambodian Centre for Human Rights (CCHR): Briefing Note - Democracy under Threat, September 2015; LICADHO: Statement - LICADHO Condemns the Conviction and Sentencing of 11 CNRP Officials and Supporters, 21.07.2015; CSO Joint Press Release: CSOs call for the immediate release of opposition Senator, Phnom Penh 18.08.2015; European Parliament: Joint Motion for a Resolution on the Political Situation in Cambodia, 25.11.2015

members were not only charged with committing a violent act but were alleged to have led and participated in an insurrection movement, a charge which carried much higher prison sentences. Three of the eleven CNRP members were sentenced in July to twenty years imprisonment for leading an insurrectionary movement and the other eight to seven years imprisonment for participating in an insurrectionary movement.<sup>25</sup> Three more CNRP activists were arrested in August 2015 on the same charges following orders from prime minister Hun Sen and authorities are still searching for two more.<sup>26</sup> The RGC failed to explain to the public how the charges and hefty prison sentences can be legally justified.<sup>27</sup> The human rights organization LICADHO criticized the sentences arguing that no due of process of law was followed in the court proceedings, and that none of the plaintiffs could identify any of the accused as having been seen participating in violent acts during the protests in July 2014.<sup>28</sup>

In August, there followed the arrest of SRP Senator Hok Sour. He was arrested and charged for allegedly using a forged document and incitement in a video-posting on Sam Rainsy's Facebook page claiming that the post-Khmer Rouge government under Heng Samrin had agreed to dissolve the border between Vietnam and Cambodia.<sup>29</sup> In a joint statement with other CSOs, COMFREL condemned his arrest and charges as being unconstitutional and politically motivated.<sup>30</sup> In November, there followed an arrest warrant for Sam Rainsy for a four-year old defamation conviction carrying a two-year prison sentence. In comments made in 2008, Sam Rainsy alleged that the current Minister of Foreign Affairs, Hor Namhong had led a Khmer Rouge prison camp named Boeung Trabek. Hor Namhong denied the allegations, asserting he was a prisoner of that camp.<sup>31</sup> In March 2013, the appeal court had upheld the verdict against Sam Rainsy. Despite the fact that Sam Rainsy was granted a royal pardon by King Norodom Sihamoni in July 2013 to return for the national election, the RGC claimed that the royal pardon did not cover this case, but only the case

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<sup>25</sup> LICADHO: Joint Statement - Latest Crackdown on Peaceful Dissent Further Perpetuates Impunity and Fuels Tensions, 28.01.2014; LICADHO: Freedom Park Violence, CNRP Arrests, Political Deal: Timeline of Events July 14 – November 28, 2014; Cambodia Daily: Helmeted Gov't Guards Beat Onlookers at Freedom Park, 22.04.2014; Cambodian Centre for Independent Media (CCIM): Repeated Attacks on Journalists Unacceptable, 25.04.2014

<sup>26</sup> Phnom Penh Post: CNRP Activists Jailed, 06.08.2015; Cambodia Daily: Three More Charged Over Freedom Park Protest, 06.08.2015

<sup>27</sup> Phnom Penh Post: CNRP Activists Sentenced for 'Insurrection', 21.07.2015

<sup>28</sup> LICADHO: Statement - LICADHO Condemns the Conviction and Sentencing of 11 CNRP Officials and Supporters, 21.07.2015

<sup>29</sup> Cambodia Daily: Senator Arrested, Charged on Hun Sen's Orders, 17.08.2015

<sup>30</sup> CSO's Joint Press Release: CSOs call for the immediate release of opposition Senator, Phnom Penh 18.08.2015

<sup>31</sup> Phnom Penh Post: Rainsy Stands by Namhong Accusation, 20.11.2015

brought against Sam Rainsy for removing border markers in 2011 to protest alleged Vietnamese territorial encroachment.<sup>32</sup>

Shortly afterwards there followed a second defamation charge, this time put forward by the National Assembly President Heng Samrin. Sam Rainsy had posted on his Facebook page a statement saying ‘*We remember that the regime born on 7 January 1979 used their court to sentence King Norodom Sihanouk to death on accusation of being a traitor [sic]*’<sup>33</sup> In December, another more severe charge was leveled against the opposition leader. Sam Rainsy was accused of involvement as an accomplice in the Senator Hok Sour forgery and incitement case. The new charge could lead to a prison sentence of up to seventeen years.<sup>34</sup> In January 2016, Senator Hok Sour was questioned by a Cambodian court as a witness for the charges against Sam Rainsy.<sup>35</sup> To avoid imprisonment Sam Rainsy has been in self-imposed exile since November.<sup>36</sup>

Of specific concern in these cases is that constitutional provisions were not properly followed. The parliamentary immunity of two CNRP lawmakers was repealed before a vote of approval had been made by the legislative. This contradicts, in the case of Sam Rainsy, Article 80 and in case of Senator Sok Hour, Article 104 of the constitution. Sam Rainsy’s immunity was repealed with a vote of the National Assembly in November. According to the constitution, Article 80 the parliamentary immunity can only be stripped with the approval of a two-third quorum of the National Assembly plenum, for which the CPP would not have enough seats. Although in the Senate the CPP holds a two-third majority, CNRP Senator Sok Hour, his arrest and imprisonment preceded without approval of the a two-third quorum to strip his immunity by the Senate in August.

Besides the lack of independence of the judiciary, corruption is perceived to be endemic in the judiciary. According to the World Justice Project, Cambodia ranked 99<sup>th</sup> out of 102 states assessed for the strength of the rule of law. Only Afghanistan, Venezuela and Zimbabwe ranked lower.<sup>37</sup> A study of the International Bar Association’s Human Rights Institute published in September 2015 concluded that the vulnerability of Cambodia’s judiciary: ‘*Corrupt influence – political and financial –*

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<sup>32</sup> Phnom Penh Post: Sam Rainsy Faces Arrest Warrant, 14.11.2015

<sup>33</sup> Cited from Radio Free Asia (RFA): Cambodian Court Summons Sam Rainsy in New Defamation Case, 02.12.2015

<sup>34</sup> Cambodia Daily: Another Arrest Warrant Issued for Sam Rainsy, 06.01.2015

<sup>35</sup> Cambodia Daily: Jailed Senator Questioned Over Sam Rainsy Facebook Case, 23.01.2016

<sup>36</sup> Phnom Penh Post: New Charge for Sam Rainsy, 03.12.2015

<sup>37</sup> World Justice Project: Rule of Law Index 2015, Country Profile Cambodia, <http://data.worldjusticeproject.org/#/groups/KHM>, accessed on 26<sup>th</sup> January 2016

*appears to be exerted at will over all judicial activities. Trainee judges are asked for bribes in order to enter onto [sic] professional training and those judges who are members of the incumbent Cambodian Peoples' Party (CPP) are favoured for appointments and promotions. It is widely acknowledged that court decisions are dictated by financial and political pressures on judges: cases in which the authorities have an interest are consistently resolved in their favour and in other cases, the party able to offer the largest bribe to a judge or clerk will almost certainly win the case, regardless of the merits.*<sup>38</sup> Although the RGC has adopted anti-corruption laws they appear not to be effective for cases concerning the judiciary. Evidence of a lack of accountability of the judiciary was provided in 2015 by the ACU, who refused to supervise an examination to be taken by new judges organised by the Royal Academy for Judicial Professions (RAJP), alleging the RAJP is not committed to combat corruption.<sup>39</sup>

### **4.3.2 Political Neutrality of Law Enforcement and Security Forces**

The political neutrality of the Royal Cambodian Armed Forces (RCAF) continues to remain a serious concern following promotions of high-ranking military officials onto the CPP Central Committee in 2015. According to Human Rights Watch (HRW), at least eighty high-ranking military members have been promoted onto the leading CPP organ, the Central Committee.<sup>40</sup> This could lead to conflicts of interest for the RCAF. High-ranking military officials have command authority over the armed forces and who are required to remain politically neutral. Their inclusion into the CPP Central Committee could mean they have leadership responsibility within the party and at the same time follow party policies and guidelines. This contradicts Article 15 of the Law on Political Parties stating that *'...members of the Royal Cambodian Armed Forces (R.C.A.F) and National Police Forces may join as members of political parties, but they must not conduct any activity for supporting or opposing any political party [sic]. A political party must not organize its organizational structure inside the ... Royal Cambodian Armed Forces and in the National Police Forces'*<sup>41</sup>. In addition, Article 6 prevents political parties from organizing armed forces<sup>42</sup>. As outlined in this report in the chapter 'Public Political Discourses and Campaigns', the RCAF also interfered into the political process on a number of occasions raising concerns about its neutrality.

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<sup>38</sup> International Bar Association's Human Rights Institute: Justice versus Corruption. Challenges to the Independence of the Judiciary in Cambodia, Phnom Penh September 2015. p. 7

<sup>39</sup> Cited in Khmer Times: ACU Battles Judicial Association on Corruption, 30.11.2015

<sup>40</sup> Human Rights Watch (HRW): Cambodia: Party Extends Control Of Security Forces, 04.02.2015

<sup>41</sup> Law on Political Parties (Unofficial translation), 18.11.1997

<sup>42</sup> Ibid.

In contravention of the Law on Political Parties, high-ranking members of the national police and gendarmerie (also known as military police) have been selected for the CPP Central Committee including the Supreme and Deputy Commissioners of the National Police and the Commander of the National Gendarmerie.<sup>43</sup> CPP control over the military and police forces is further amplified by the appointment of two sons of prime minister Hun Sen to the CPP Central Committee and high-ranking military positions. As outlined in previous COMFREL reports, Hun Manet, Hun Sen's eldest son is Deputy Chairman of the RCAF Joint Staff, Head of the Defense Ministry's counter-terrorism department and Joint Counterterrorism Task Force and Deputy Commander of Hun Sen's Bodyguard Unit. Hun Sen's second son, Hun Manith is Deputy Head of the Military Intelligence Unit. Both were also elected to the CPP Central Committee at the 47th party congress in 2014.<sup>44</sup>

Of particular concern is that high-ranking officials of the Royal Armed Forces of Cambodia (RCAF) and the national police including the Defense Minister, Commander of the RCAF and the National Policy Chief actively supported anti-CNRP campaigns in 2015.<sup>45</sup> Deputy Commander Kun Kim demanded that the First Vice-President of the National Assembly, Kem Sokha be removed. The demand was accompanied by anti-CNRP protests of RCAF soldiers in uniform along the Thai-Cambodian border holding banners reading *'Khem Sokha is an inciter'* and *'Khem Sokha is a bad person, creating never-ending problems'*<sup>46</sup>. The political activities of the RCAF were published in local media with pictures displaying RCAF military units in full uniform holding the banners despite being in clear violation of the *'Law on General Statutes for the Military Personnel of the Royal Cambodian Armed Forces'*<sup>47</sup>. The law stipulates in Article 9 that *'military personnel shall be neutral in their functions and work activities, and the use of functions/titles and State's materials for serving any political activities, shall be prohibited'* and Article 13 states that *'the exercise of the rights to demonstration ... shall be prohibited for military personnel'*. No disciplinary actions became publically known. It was not the only time that high-ranking military officials have pledged loyalty to the CPP. In July, Deputy Military Commander Chea Dara commented that the *'army belongs to the Cambodian People Party'*<sup>48</sup>. Similar observations were made in 2014 confirming that the CPP has full control over the RCAF. This raises legitimate concerns about the political neutrality of security forces should the CPP not win the next national election.<sup>49</sup>

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<sup>43</sup> Phnom Penh Post: CPP , Police Brass Promoted, 22.02.2016

<sup>44</sup> COMFREL Annual Report 'Democracy, Election and Reform', March 2015. p. 40

<sup>45</sup> Cambodia Daily: Police, Military Show Support for Hun Sen on Maps Issue, 24.08.2015

<sup>46</sup> Cambodian Daily: Army Joins Call For Kem Sokha To Step Down, 28.10.2015

<sup>47</sup> The Law on General Statutes for the Military Personnel of the Royal Cambodian Armed Forces, 15.09. 1997

<sup>48</sup> Cambodia Daily: Officials Reject Claims That Army Belongs to CPP, 31.07.2015

<sup>49</sup> COMFREL: Annual Report 'Democracy, Election and Reform, March 2015, p. 22, 37

#### 4.4 Corruption and Misuse of State Resources

Whereas executive responsiveness improved, the RGC continued to lack accountability. Policies to combat corruption appear to be ineffective. For more than two decades corruption was widely tolerated and ignored. As far back as 1999 media warned of ‘*Cambodia’s Kingdom of Corruption*’<sup>50</sup>. In 2015, media still continue to use headlines such as ‘*Cambodia Perceived as the Most Corrupt in Region*’<sup>51</sup>. Recently released surveys reveal corruption is perceived to be almost an integral part of Cambodia’s political culture. A 2015 survey of Transparency International found that ‘*nearly 70 percent of youth who had contact with the police in the twelve months prior to the survey experienced corruption, one in two youth [sic] has faced corruption while trying to get a document or permit, and while trying to pass an exam in school. 38 percent believe the national administration is either very or somewhat corrupt and 37 percent believe the local administration is either very or somewhat corrupt. Nearly 60 percent of youth find it acceptable to pay a share of their first salary to receive a job, 50 percent find it acceptable to pay an extra fee to nurses and doctors to receive a better medical treatment [sic], 31 percent find it acceptable to enter education or a job through connections rather than through merit, 24 percent find it acceptable to pay an extra fee to officials to hasten vehicle registration*’.<sup>52</sup> In the Perceived Corruption Index of Transparency International, Cambodia ranked only 150<sup>th</sup> out of 168 countries surveyed and was perceived as the most corrupt in ASEAN. Another survey of Transparency International Cambodia found that among hundred Chief Executive Officers (CEOs) of small- and medium enterprises, ‘*57 percent ... answered that corruption is one external factor impeding on the progress of their company*’<sup>53</sup>.

COMFREL found that the number of observed cases of political corruption and misuse of state resources between January and December 2015 have increased by eighty cases to the previous year. A total 297 of cases were observed, of which 133 cases were misuse of state resources (in 2014 only 60 cases were found) and 164 cases political corruption. Political corruption refers to abuse of powers, irregularities and bribes of individuals in elected and non-elected public offices and nepotism. In total, eight cases of misuse of power were observed (in 2014 only three cases), 141 cases of irregularities and bribe taking by individuals in elected and non-elected public offices benefiting their political party (a slight increase, in 2014 136 cases were found) and eight cases of

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<sup>50</sup> Phnom Penh Post: Cambodia’s Kingdom of Corruption – Trying to Find Ways To Turn The Tide, 09.07.1999

<sup>51</sup> Cambodia Daily: Cambodia Perceived Most Corrupt in Region, 28.01.2016

<sup>52</sup> Transparency International Cambodia (TIC): Questioning Corruption – A National Survey on Youth’s Perception on Corruption and Integrity in Cambodia, Phnom Penh 2015. pp. 14-16

<sup>53</sup> Transparency International Cambodia (TIC), pp. 6-7

nepotism (a slight decrease to 2014 when eighteen cases were found). Misuse of state resources also included the using of state-run media to benefit ruling party's interest. COMFREL found that seventy percent of broadcasting in state TV was biased towards the ruling party in 2015. It was also found that the management of the national budget and party finances continue to lack transparency and accountability. The state budget law like in previous years was unanimously adopted by CPP lawmakers, without the CNRP.<sup>54</sup> Party finances are not disclosed to the public preventing any independent financial review contrary to current regulations. COMFREL will soon release a special report on political corruption and misuse of state resources.<sup>55</sup>

Considering these developments, it appears corruptive practices have been passed from one to the next generation and there is a long way to go to overcome this challenge. In 2015 no high profile case became known leading to prosecutions. Demands by Transparency International Cambodia to improve the anti-corruption policies by adopting a whistle-blower law, a law on access to information and to publicly release asset declarations of RGC officials have not yet been met. The RGC also appeared to have raised barriers for corruption investigations by the CNRP. In June, vice-prime minister Sok An passed a directive to block investigations of the parliamentary anti-corruption commission chaired by the CNRP. Government officials now need to seek clearance from their superiors before providing information to lawmakers investigating corruption claims and need to adhere to Article 22 of the Anti-Corruption Law, which gives the Anti-Corruption Unit (ACU) the sole authority to investigate corruption.<sup>56</sup> A motion put forward by the CNRP to question Sok An was unsuccessful.<sup>57</sup> One Cambodian newspaper concluded on the current anti-corruption policies: *'...more common than arrests of officials has been the public release of corruption allegations along with letters of denial, in which the ACU often declines to say whether it is pursuing a criminal investigation.'*<sup>58</sup>

Nonetheless, the Anti-Corruption Unit has become more outspoken on corruption in 2015 despite lacking independence and the Ministry of Education has announced the introduction of a nationwide anti-corruption curriculum for students in grades 7, 8 and 9.<sup>59</sup> In September the ACU published three separate statements on its webpage accusing the Ministry of Posts and Telecommunications' general department of posts, Telecom Cambodia and the Phnom Penh

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<sup>54</sup> Phnom Penh Post: Assembly Passes Budget As CNRP Boycotts Vote, 01.12.2015

<sup>55</sup> COMFREL Monitoring of Political Corruption and Misuse of State Resources in 2015

<sup>56</sup> Cambodia Daily: Council of Ministers Defends Gov't Corruption Probe Directive, 23.06.2015

<sup>57</sup> Phnom Penh Post: Son Chhay to Call Sok An Over Corruption Order, 26.06.2015

<sup>58</sup> Cambodia Daily: Senior Police Official Denies Corruption, 07.08.2015

<sup>59</sup> Phnom Penh Post: Corruption Curriculum Headed To Junior High, 17.12.2015

Autonomous Port for taking contractors without a proper bidding process among other malpractices.<sup>60</sup> In November, the ACU publicly criticized the Royal Academy for Judicial Professions (RAJP) for a lack of commitment to fight corruption during exams stating that *The ACU declined to participate as observers in the 7<sup>th</sup> exam to recruit judges, organized by the RAJP. The reason is that RAJP lacks the will to really cooperate with the ACU in terms of fighting corruption.*<sup>61</sup> In December the ACU publicly accused traffic police and Ministry of Interior (MoI) officials of corruption and claimed they will be *‘cleaned with an iron brush’*<sup>62</sup> forcing the MoI to make a public statement defending its officials. After reactions from the government and MoI, the ACU apologised to the MoI and participation in the exams of the RAJP.

## 5. Freedoms and Democratic Space

### 5.1 Freedom of Expression and Access to Information

Freedom of expression and access to information did not improve despite recent rapid internet penetration in Cambodia. The RGC responded to the new technological development with stricter controls of expression through the internet, charges and imprisonment of citizens who expressed online anti-government opinions, and the continuation of strict controls over traditional media including TV, radio and print media. A newly released study on Cambodia’s media landscape in 2015 re-confirmed a high concentration in traditional media favouring the CPP. The Cambodian Media Ownership Monitor, an initiative of Reporters without Borders and the Cambodian Center for Independent Media (CCIM), revealed that the TV and print and radio media sectors are highly concentrated in the hands of individuals or companies linked to the CPP. Of the total 27 media company owners, at least eleven are RGC officials, CPP members or CPP affiliates. Five of them own at least eight TV stations and reach an audience of 63 percent total viewership, five own five newspapers each and reach an audience of 41 percent of total readership, and seven own a radio station each reaching an audience of 8 percent of listenership. Considering that TV reaches the broadest audience in Cambodia (93 percent) followed by internet (39 percent) and radio (35 percent), the CPP and RGC can significantly influence public opinion.<sup>63</sup>

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<sup>60</sup> Cambodia Daily: ACU Accuses Three State Bodies of Malpractice, 16.09.2015

<sup>61</sup> Cited in Khmer Times: ACU Battles Judicial Association on Corruption, 30.11.2015

<sup>62</sup> Cited in Cambodia Daily: Interior Ministry Hits Back at ACU Graft Claims, 12.12.2015

<sup>63</sup> Media Ownership Monitor (MOM): Monitoring Media Ownership in Cambodia, mom-kh.com/?locale=en

Other political parties continue to have little influence over traditional media. Only one newspaper is affiliated to the CNRP and only one radio station belongs to the newly formed Beehive Democratic Society Party. Only during the official election campaign other political parties than the CPP have access to state TV. Although the CNRP have finally received a long awaited license from the Ministry of Information to run a TV station following the political agreement of July 2014, it is not clear when it will operate. Currently the CNRP is fundraising to cover the estimated costs of three million USD to run the station.<sup>64</sup> By December the CNRP had raised 800,000 USD, mainly from Cambodians living overseas. But the fundraising campaign was temporarily halted after the arrest of CNRP Senator Sok Hour, who had led the campaign. In addition, several other RGC approvals, beside the TV license are needed before the station can become operational.<sup>65</sup>

That said, the rapid increase of internet penetration in Cambodia could in the future revert this structural constrain on freedom of expression and access to information. The numbers of citizens who gain more access to information and can more openly exercise their freedom of expression through the internet will likely increase. Internet access will also likely become more important for political competition. A recent survey found for example that the percentage of Cambodians who own at least one smartphone, through which they can access the Internet, reached 39.5 percent in 2015. This is an increase of 51.7 percent from 2014, and an increase of 100 percent from 2013. This means almost one in three Cambodians use the Internet (3,068,000). Facebook is the most popular social media. 3,001,920 Cambodians claim to use Facebook.<sup>66</sup> In addition to these findings, a survey of CCIM, found that 75.3 percent of 895 citizens randomly surveyed online found the internet useful for accessing news and information that they cannot find in the traditional media.<sup>67</sup> But there still remains an urban-rural gap in internet penetration. Whereas in urban areas 51.7 percent have at least one smartphone, in rural areas only 34.3 percent have one. The study also found that 44.6 percent of urban Cambodians claim to use the Internet, whereas in rural areas the percentage is only 27.37. However, this gap might be closed since it can be expected that the internet penetration will further increase. Internet is already challenging other media. It has overtaken radio in 2015 as the

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<sup>64</sup> Cambodia Daily: Rainsy Launches CNRP TV Station Campaign, 13.05.2015

<sup>65</sup> Cambodia Daily: Opposition CNRP Moves Forward with TV Plan, 19.12.2015

<sup>66</sup> Phong, Kimchhoy; Sola, Javier: Research Study – Mobile Phones and Internet in Cambodia in 2015, Phnom Penh November 2015. p. 7, p. 22

<sup>67</sup> Cambodian Centre for Independent Media (CCIM) and University of Kentucky: Perceptions of Online Freedom and Expression and Political Engagement: Study of Internet Connected Cambodians, March 2015. p. 11

second most important source of information and is nearing the number of citizens for whom TV is the most important source.<sup>68</sup>

For the first time in 2013, changes in the media landscape have influenced the outcome of an election. . Because of a lack of access to traditional media, the CNRP intensively used internet and facebook for their election campaign in order to reach out to, in particular young voters, who according to recent surveys use the internet more often than other age groups.<sup>69</sup> A web based CNRP TV and Facebook pages of leading CNRP politicians reached a broader audience than ever before and changed the political discourse of CPP dominated traditional media. Live footage of violent crackdowns on demonstrators by security forces, of street marches and public speeches of leading CNRP politicians on YouTube and Facebook mobilized parts of the Cambodian public more effectively than during campaigns in preceding elections. The new campaign took the CPP by the surprise, but was soon countered with its own online election campaign, mainly through Facebook profiling prime minister Hun Sen and his youngest son, CPP lawmaker Hun Many to attract young voters. These moves were followed by the creation of Facebook profiles of a number of ministries.<sup>70</sup>

However, the CPP did not only rely on online campaigns to counter the CNRP. After the elections and the post-election crisis, controls over internet were tightened. In May 2015, the CPP General-Secretary and Central Committee ordered ruling CPP officials and party officials at provincial, municipal and commune levels to monitor CNRP speeches, and report on the use of any defamatory or inflammatory language in contradiction to the agreed '*culture of dialogue*'.<sup>71</sup> In the same month, the Council of Ministers requested the Ministries of Interior and Post and Telecommunications take legal actions against Facebook users who post insulting or defamatory material about government leaders.<sup>72</sup> The government defended the request stating that those who misuse the freedom of expression to insult and libel other individuals violate their rights and dignity.<sup>73</sup>

The orders came before a series of legal actions were brought against CNRP lawmakers and political activists who had posted online, material critical of the government. In July, disciplinary actions were taken against one CNRP lawmaker who had claimed on Facebook that National Assembly President

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<sup>68</sup> Phnon, Kimchhoy; Sola, Javier, p. 23

<sup>69</sup> Ibid., pp. 16-17

<sup>70</sup> LICADHO: Going Offline? The Threat to Cambodia's New Found Internet Freedom, Phnom Penh 2015. pp. 8-10

<sup>71</sup> Cambodia Daily: CPP Orders Officials to Monitor CNRP Speeches, 07.05.2015

<sup>72</sup> Cambodia Daily: Gov't Requests Legal Action Against Social Media Users, 23.05.2015

<sup>73</sup> Cambodia Daily: Facebook Users May Face Charges, Gov't Says, 21.05.2015

Heng Samrin had unconstitutionally blocked a letter to prime minister Hun Sen calling for a halt to demarcations of the Cambodian-Vietnamese border until 2018. The CNRP lawmaker was suspended for the next fifteen sessions of the National Assembly and saw his salary cut by fifty percent for two months.<sup>74</sup> In September, a 25 year old political science student was arrested for a Facebook posting asking others to join in for an ‘orange revolution’ to change the regime.<sup>75</sup> He was charged with incitement, which carries a prison term of up to three years.<sup>76</sup> In October and November, there followed the above mentioned lawsuits against Sok Hour and Sam Rainsy for their Facebook video-posting. . Arrest warrants were also issued against three Sam Rainsy Facebook team members for having allegedly produced the online video. The accused fled to the Philippines.<sup>77</sup> The same month Hun Sen publically warned university students at a graduation ceremony that the RGC could track down any one who insults or criticizes him or politically sensitive RGC policies online.<sup>78</sup> In January, the RGC went even further by requesting Interpol’s support for tracking down two Cambodians living overseas for posting an alleged defamatory photo of Bun Rany, the wife of Hun Sen on Facebook.<sup>79</sup> Another Cambodian was being sought after a supposed defamatory Facebook posting linking the Prime Minister’s wife Bun Rany and his son Hun Manet to illicit trade of luxury timber.<sup>80</sup>

In September, a student was arrested for posting a death threat on Facebook against a prominent academic who was conducting research on behalf of the RGC related to border demarcation between Cambodia and Vietnam. The same month a graduate student posted a death threat on Facebook against deputy prime minister and Minister for Interior, Sar Kheng. The student was given a fifteen months prison term, but had his sentence reduced after he apologized to Sar Kheng and claimed that he never had intended to carry out a bomb attack, but was frustrated about repeated changes of his graduation ceremony date.<sup>81</sup> Also, a case was forwarded to the court concerning a death threat in 2013 made against former First Vice-President of the National Assembly, Kem Sokha. A police officer was removed from his post pending the investigation, which lasted almost

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<sup>74</sup> Cambodia Daily: CNRP Lawmaker Punished Over Facebook Post, 25.07.2015

<sup>75</sup> Phnom Penh Post: ‘No Intention to Incite’, 11.09.2015

<sup>76</sup> Cambodia Daily: Student Defends Call for ‘Colour Revolution’, 11.10.2015

<sup>77</sup> Cambodia Daily: Arrest Ordered for Rainsy Facebook Manager, 02.12.2015

<sup>78</sup> Phnom Penh Post: Hun Sen Warns Facebook Users That He’s Watching, 29.12.2015

<sup>79</sup> Cambodia Daily: Ministry Seeks to Arrest Photoshopper Abroad, 20.01.2016

<sup>80</sup> Cambodia Daily: Hun Manet Launches Lawsuit Over Facebook Post, 23.01.2016

<sup>81</sup> Phnom Penh Post: ‘Death Threat’ Charges, 08.09.2015; Cambodia Daily: Interior Minister Defends Facebook Arrests, 17.09.2015; Radio Free Asia: Cambodian Police Arrest Student For Facebook Threat To Blow Up Deputy PM, 29.09.2015; Cambodia Daily: Police Officer Rejects Blame for Khem Sokha Death Threat, 13.12.2013

two years, before the case was moved to the court in November 2015. The police officer claims that his Facebook account was hacked. In January 2016, a farmer was arrested for a Facebook posting threatening the life of prime minister Hun Sen.<sup>82</sup> Apart from legitimate restrictions on online freedom of expression concerning these death threats, it's questionable if other restrictions of expression are justifiable when many have targeted the CNRP and political activists sympathetic to the CNRP, but not the ruling party. The only exception in 2015 was the death threat case against Kem Sokha which led to court proceedings.<sup>83</sup> Following the arrests of CNRP lawmakers and political activists, a group of fourteen NGOs including COMFREL released in September a '*Statement of Principles for Cambodian Internet Freedom*'<sup>84</sup> with the aim to guide RGC regulation of online freedom of expression while protecting and promoting internet freedom.

Defamation cases other than those concerning digital media content in 2015 further signalled that freedom of expression can be threatened anytime when found to be politically opportune. By contrast to those brought against CNRP officials' defamation cases involving government officials have not been successful. A precedent was set in 2015 with the first defamation case put forward against a member of the government. The President of a minor political party, the Khmer Power Party (KPP) sued the Minister of Foreign Affairs, Hor Namhong for allegedly describing him as the '*terrorist mastermind*'<sup>85</sup> of his party. The case was dismissed by the court in February 2016.

The tendency to impose more restrictions on freedom of expression received further confirmation in 2015 with the public circulation of draft legislation related to cyber-crime and telecommunications laws. Although both laws have not yet been adopted they could lead to stricter measures by the RGC on online freedom of expression according to LICADHO and CCHR.<sup>86</sup> Of particular concern is that both laws impose stricter definitions of the freedom of expression and appear to bring all Internet Service Providers under central control of a newly established RGC institution named the 'National Anti-Cybercrime Committee' (NACC) and a '*Cyber War Team*' composed of high-ranking

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<sup>82</sup> Phnom Penh Post: Sokha Threat Investigation In Works, 22.10.2015; Facebook Threat Case Is Moved To Court, 04.11.2015; Cambodia Daily: Farmer Charged for Facebook Threat on PM, 09.01.2016

<sup>83</sup> COMFREL Media Monitoring 2015

<sup>84</sup> CCHR, et. al.: Statement of Principles for Cambodian Internet Freedom, September 2015; Voice of America (VOA): Following Arrests, Group Issue Nine Principles of Internet Freedom, 15.09.2015

<sup>85</sup> Phnom Penh Post: Namhong Suit Filed by KPP Chief As Promised, 22.12.2015; KPP's Chief Defamation Case Against Namhong Tossed by Judge, 03.02.2016

<sup>86</sup> LICADHO: Going Offline? The Threat to Cambodia's Newfound Internet Freedoms, May 2015

government officials.<sup>87</sup> Fresh concerns will be raised if the new laws are used in similar ways to that of traditional media to curtail opposition and government critics. A survey of CCIM in 2015 found that a majority of Cambodians (63 percent) feel very or somewhat free to express their opinions online without fear of repercussions, but 88 percent felt that they would not feel free anymore if the RGC enacts new laws to monitor online activity.<sup>88</sup>

The RGC insists that current draft laws are still under consideration and consultations with the public will take place before the laws will be adopted by parliament. Some controversial provisions from the draft were already jettisoned after criticism including provisions criminalizing online content that *'slanders or undermines'*<sup>89</sup> the government or public officials or affects *'political cohesiveness'*<sup>90</sup>. But concerns remain over the purpose of current policies considering the past and current practices of the RGC.<sup>91</sup> These concerns were strengthened in May when the RGC announced that the new laws and policies not only fight cyber-crime, terrorism, but also address online content that *'impacts the good tradition of society[sic]'*<sup>92</sup> including racism, religious persecution, slander, defamation and insults, and online content that impacts the *'honour of the government'*<sup>93</sup>.

Press freedom continued to be threatened in 2015. Journalists investigating environmental problems, corruption, the illicit logging trade, illegal fishing, or those who are critical of government policies and are suspected of supporting the opposition, are more likely to be intimidated, subjected to violent acts including death threats and in some cases death, than journalists exercising self-censorship and cover only non-politically sensitive stories or stories supporting the CPP. According to CCIM 28 percent of Cambodian journalists were threatened in 2014. Between 1993 and 2014 thirteen journalists were killed, but only in two cases were the offenders found and prosecuted.<sup>94</sup> Press freedom remains constrained because of a lack of freedom of information. Although parts of an access to information law have been drafted with the aim of facilitating the work of media and

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<sup>87</sup> CCHR: Briefing Note – Cambodia: Democracy under Threat, September 2015. pp. 8-10

<sup>88</sup> Cambodian Centre for Independent Media (CCIM): Perceptions of Online Freedom of Expression and Political Engagement: Study of Interconnected Cambodian, Phnom Penh March 2015. pp.18-21

<sup>89</sup> Phnom Penh Post: Cybercrime Law 2.0 Nixes Key Provision, 05.12.2015

<sup>90</sup> Ibid.

<sup>91</sup> Joint Statement of CCHR, LICADHO, ADHOC, CCIM; et. al.: Civil Society Organizations Call on the Government and Political Parties to Respect Freedom of Expression, Phnom Penh 04.02.2015

<sup>92</sup> Ibid.

<sup>93</sup> Cambodia Daily: Cyber Law Protects Gov't Honour, Ministry Says, 27.05.2015

<sup>94</sup> Cambodian Centre for Independent Media (CCIM): Relatives of Murdered Journalists and Media Institutions Call For Ending Impunity, 14.12.2015

provide more information to the public, no substantial progress has been made by the RGC in 2015.<sup>95</sup> Cambodia continues to rank 139 out of 180 countries in the World Press Freedom Index, though it is doing better than Vietnam (175), Laos (171) Malaysia (147), Myanmar (144) and the Philippines (141), but is behind Indonesia (138), Thailand (134) and Brunei (121) in the ASEAN region.<sup>96</sup>

Universities in 2015 were also negatively affected by RGC restrictions on freedom of expression. In August, a directive from the Ministry of Education reminded educational institutions that any form of political activism or association at academic institutions is banned, warning that it will shut down universities, post-secondary schools and student associations that engage in or promote political activity, including the removal of academics and students from their academic institutions if deemed necessary. The RGC defends the measure to prevent politicization of educational institutions referring to the Education Law of 2007, in which Article 34 stipulates that *'Educational Establishments and institutions shall respect the principle of neutrality. Political activities and/or propaganda for any political party in educational establishments and institutions shall be completely banned'*.<sup>97</sup> The directive however does not apply equally for all political parties. It is well known that prime minister Hun Sen, among other high-ranking government officials use university graduation ceremonies to mobilize support for the government and to criticize the opposition.<sup>98</sup> Also, the largest CPP Youth organization, the 'Union of Youth Federations of Cambodia' (UYFC) led by Hun Many, a son of Hun Sen and lawmaker, is active in a number of educational institutions. In September, the Ministry of Education even defended a CPP political campaign at the University of Phnom Penh for not violating the directive.<sup>99</sup>

## 5.2 Freedom of Assembly

Freedom of Assembly made some progress in 2015. Security forces responded with less violence to demonstrations, protests and marches when compared to 2014.<sup>100</sup> This left more space for

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<sup>95</sup> Phnom Penh Post: Access to Information Draft Law on Schedule, 24.02.2015 and Official Affairs Might Be Secret Under Law, 10.06.2015; Voice of America (VOA): Groups Have Their Say on Access to Information Law, 09.08.2015; Phnom Penh Post: Public Input Touted for Access to Information Draft Law, 02.02.2016

<sup>96</sup> Reporters Without Borders: World Press Freedom Index 2015, en.rsf.org

<sup>97</sup> Cambodia Daily: Ministry Warns of Punishment for Political Activity at Schools, 12.08.2015

<sup>98</sup> for example: Cambodia Daily: Hun Sen Warns Opposition of Backlash by Armed Forces, 20.10.2015, Voice of America (VOA): Hun Sen Cautions Students Against Voting for Opposition, 19.10.2015; Xinhua News Agency: Cambodian PM Blasts Opposition Leader for Critical Remarks, 19.01.2015

<sup>99</sup> Cambodia Daily: Ministry Defends Pro-CPP Speech at University, 01.09.2015

<sup>100</sup> See a detailed study from Amnesty International (AI): Taking To The Streets, Freedom of Peaceful Assembly in Cambodia, London/Phnom Penh May 2015

Cambodians to exercise their right to peacefully assemble. In Phnom Penh alone, 443 protests were recorded by the authorities.<sup>101</sup> As reported by media, most protests concerned social and civil issues including land disputes and evictions, concerns about the new law on associations and non-governmental organizations, labour conflicts, disputes over custom and market fees, disputes over installation of electricity towers, construction sites, road constructions, sand-dredging and driver licenses. Demonstrations and marches were also held for International Labour Day and Human Rights Day and went ahead without major disturbances. Although the Phnom Penh authorities had banned demonstrations on Labour Day and threatened some union leaders with lawsuits for not complying with the ban, labour unions held demonstrations with an estimated 3,000 participants at three separate locations in Phnom Penh.<sup>102</sup> On Human Rights Day, LICADHO reported that an estimated 10,000 citizens participated in twenty marches and events across Cambodia.<sup>103</sup> Also political party assemblies of the opposition were tolerated. The majority of protests in 2015 were labour protests in the garment sector. In Phnom Penh alone 222 strikes were counted. Labour protests in some cases more involved more than 1,000 workers and in some cases turned violent.<sup>104</sup>

Threats to the freedom of assembly however remain. Particularly worrying is that responses by the RGC targeted especially at the CNRP in 2015 signaled that the right of peaceful assembly can at any time be curtailed when deemed politically necessary. The prosecution of fourteen CNRP members for their alleged involvement in violence during anti-government protests in July 2014 is a case in point<sup>105</sup> Of great concern are anti-opposition protests to counter the CNRP, which have been not observed in the past decade. In October, an anti-opposition protest was held in retaliation for anti-government protests in France during a state visit of prime minister Hun Sen. It was after this protest that two CNRP lawmakers were beaten up in front of the National Assembly.<sup>106</sup>

Civil assemblies were also countered with force by security forces. Labour strikes turned violent in December when security forces broke up a 8,000 strong protest with water cannons in two special economic zones in Bavet city. During the protests property was destroyed and some protesters were arrested. In January, anti-eviction protesters were prevented from gathering at a public square in

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<sup>101</sup> Phnom Penh Posts: Labour Unrest Continues, 02.02.2016

<sup>102</sup> Cambodia Daily: Unions March on Labor Day Despite Warning, 02.05.2015

<sup>103</sup> LICADHO: Photo Album – Thousands Demand Justice for Human Rights Day Celebrations, 06.12.2015

<sup>104</sup> Phnom Penh Posts: Labour Unrest Continues, 02.02.2016

<sup>105</sup> See chapter 'Independence of the Judiciary and Due Process of Law'

<sup>106</sup> Phnom Penh Post: Rainsy South Korea Event Off-Limits for Cambodians, Envoy Warns, 13.11.2015

Phnom Penh. In May 2015, military police shot in the air and severely beat a man after protests over import taxes erupted into violence. Protesters burned tires and threw bricks at the customs department.<sup>107</sup> In June, three environmental activists were temporarily detained by police for demonstrating in front of the National Assembly. In August, three other environmental activists were arrested in Koh Kong over alleged threats to destroy equipment of a sand-dredging company during a protest. In September, seventeen protesters were temporarily arrested for protesting for the release of these environmental activists in front of the court house.<sup>108</sup>

### 5.3 Freedom of Association

Like in the previous year no impediments on the right to freedom of association were observed. But the freedom of association may come under threat, because of the new ‘Law on Associations and Non-Governmental Organizations’ (LANGO). The LANGO was approved by a CPP majority in the National Assembly and the Senate in July, then approved by the Constitutional Council and signed by King Sihamoni in August. The CNRP boycotted both parliamentary sessions.<sup>109</sup> Even though no repercussions against NGOs and associations leading to their prohibition or dissolution have been reported, the LANGO is perceived by CSOs including COMFREL as potential tool to restrict the freedom of association. Also, some provisions in the LANGO lack clarity and might lead to controversies.<sup>110</sup> CSOs including COMFREL led an unsuccessful public campaign to abolish or at least improve it.<sup>111</sup>

The LANGO contains provisions that unlawfully restrict freedom of association, assembly and expression, as well as the right to participate in public life. The following articles are of particular concern: Article 9 of the LANGO imposes mandatory registration for all domestic associations and NGOs. Onerous registration requirements are stated in other provisions, including article 6. Organizations that are not registered are not allowed to conduct any activity. The law also

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<sup>107</sup> Phnom Penh Post: Violent Protests Boil Over in Bavet, 23.12.2015; Cambodia Daily: Peaceful Protest Turned Away from Freedom Park, 21.01.2015; Phnom Penh Post: Violent Clash Erupts in Poipet, 25.05.2015

<sup>108</sup> Radio Free Asia (RFA): Cambodian Authorities Keep Environmentalists in Jail as They Await Trial, 20.08.2015; Cambodian Centre for Human Rights (CCHR): Briefing Note – Democracy Under Threat, Sept. 2015, p. 15

<sup>109</sup> Phnom Penh Post: King Signs Law on NGOs, 14.08.2015

<sup>110</sup> CCHR: CCHR Open Letter Seeks Clarification Regarding Application of the LANGO to CBOs and Informal Groups, 21.08.2015

<sup>111</sup> Phnom Penh Post: LANGO Change ‘Too Little’, 10.07.2015; Phnom Penh Post: Crowd ‘Say No’ to LANGO, 08.07.2015; LICADHO/ADHOC: Joint Statement – ADHOC and LICADHO Urge Constitutional Council to Reject Unconstitutional LANGO, Phnom Penh 30.07.2015

criminalizes unregistered groups conducting activities. This is a direct violation of Article 22 of the *International Covenant on Civil and Political Rights (ICCPR)*.

The RGC defended the new law arguing it was necessary to regulate the sector and stop ‘rouge’ operators. But, the new law also allows the RGC to restrict the freedom of associations for domestic associations and non-governmental organizations suspected to be political or not neutral. According to Article 24, *‘Domestic non-governmental organizations, foreign non-governmental organizations, or foreign associations shall maintain their neutrality towards political parties in the Kingdom of Cambodia’*<sup>112</sup>. This provision is particularly problematic because past practices indicate that political neutrality is only demanded from those CSOs, who do not support the ruling party. A number of provisions in the LANGO provide the Ministry of Interior (MoI) with the legal power to disapprove a registration or even to dissolve non-governmental organizations and associations based on the provision of political neutrality. According to article 8 the MoI has the right *‘to deny the request for registration of an association or non-governmental organization whose purpose are found [sic] would endanger the security, stability and public order or jeopardize the national security, national unity, culture, traditions, and customs of Cambodian national society’* and furthermore the right according to Article 30 *‘to remove from the register any domestic association or non-governmental organization that conducts activities that endanger the security, stability and public order or jeopardize the national security, national unity, culture, traditions, and customs of Cambodian national society...’*<sup>113</sup>. In the future, domestic human rights and democracy NGOs could come under closer scrutiny and might be subject to allegations of political non-neutrality. This could lead to self-censorship among these NGOs. During the post-election crisis the ruling party questioned in particular the political neutrality of NGOs, who had monitored the election process and opposition protests.<sup>114</sup>

#### **5.4 Developments of Cambodia’s Party System and Political Competition**

Despite electoral gains of the CNRP in the national election 2013 which indicated changes of Cambodia’s party system, understood in terms of changes *‘in the structure of competition for control of the executive’*<sup>115</sup>, Cambodia’s party system did not move away from a predominant party system to a competitive multi-party system. A competitive multiparty-system can be defined as a system in

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<sup>112</sup> CCC: Law on Non-Governmental Organizations and Associations, (Unofficial Translation), 19.08.2015

<sup>113</sup> Ibid.

<sup>114</sup> Cambodia Daily: Ruling CPP Sees Threat in Civil Society Groups, 19.03.2014; Phnom Penh Post: NGOs Defends Right to Aid Rally, 13.09.2013

<sup>115</sup> Katz, S. Richard; Crotty, William (Eds.): Handbook of Party Politics, London: Sage Publications 2006. p. 65

which multiple parties run for national election under the condition of a level-playing of political competition to gain control of government separately or in coalition.

Cambodia's party system seems indeed to move away from a pre-dominant party system towards a non-competitive hegemonic party system. Reforms to include the CNRP in the legislative and electoral process in the first half of 2015 appear to be temporary and anytime could be reversed if found to be political opportune to do so by the ruling party. The repressions against the CNRP which followed in the second half of 2015 signaled to the Cambodian public that no political party will be allowed to seriously challenge the political dominance of the CPP. Although new political parties were formed in 2015 leading to more political pluralism, it remains questionable if these changes will allow Cambodia's party system to progress towards a competitive multiparty system as foreseen in the constitution.

In 2015, eight new political parties were founded and approved by the Ministry of Interior bringing the total number to 40 registered political parties. The new parties are the Beehive Social Democratic Party (BSDP), the Khmer Solidarity Party (its founder is a CNRP senior officer), the Grassroots Democracy Party (GDP), the Khmer Power Party (KPP), the Khmer National Justice Party, the Cambodian Youth Party (CYP), the Cambodian Liberty Party (CLP – the founder is a CPP senior officer) and the Cambodian Indigenous Democracy Party (CIDP).<sup>116</sup> Other minor political parties are currently the League of Democracy Party (LDP), the Cambodian Nationality Party (CNP), the Khmer Anti-Poverty Party (KAPP), the Democratic Movement Party (DMP) and the Republic Democratic Party (RDP). These parties had contested the commune election in 2012, but only two gained commune councilor seats and are currently active. These were the LDP and CNP.<sup>117</sup> For the national election in 2013 one new minor political party, the Khmer Economic Development Party (KEDP) contested. None of the minor political parties won a parliamentary seat. Taken together their share of the overall vote was only 3 percent.<sup>118</sup>

Despite this party pluralism it is unlikely that any of the minor political parties could emerge as a main challenger to the two major parties. They lack institutionalization, publicity and resources to run a nationwide election campaign. They could, however, partially split the CNRP and the CPP

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<sup>116</sup> Agence Kampuchea Press (AKP): Eight New Political Parties Registered Last Year, 04.01.2016

<sup>117</sup> COMFREL Final Assessment and Report on 2012 Commune Council Elections, Phnom Penh Oct. 2012, p. 55

<sup>118</sup> COMFREL Final Assessment and Report 2013 National Assembly Elections, Phnom Penh Dec. 2013, pp.16-17

vote. Among those, the newly formed Khmer Solidarity Party (KSP) led by a former senior CNRP official, Ms. Lak Sopheap could cost the CNRP votes. She had alleged that Sam Rainsy had taken a twenty million USD bribe to end the political deadlock after the national election in 2013.<sup>119</sup> Some CNRP votes could also be lost to the BSDP and FUNCINPEC. The BSDP, founded by the popular radio host and CPP opponent Mom Sonando supported the CNRP during the election campaign in 2013, but is now critical of the CNRP for compromising with the CPP.<sup>120</sup> FUNCINPEC has experienced something of a political revival after Prince Norodom Ranariddh was reelected as party president.<sup>121</sup> However, both parties are plagued by factionalism and split into the Khmer National United Party (from FUNCINPEC) and the Khmer United Great Nation Party (from BSDP).<sup>122</sup> It is worth mentioning also the right-wing KPP, might split CNRP votes because of its outspoken anti-Vietnamese nationalism, which is unfortunately prevalent among elements within the Cambodian public.<sup>123</sup>

The emergence of new minor political parties could create swing voters and non CPP voters. The formation of new political parties could also be part of strategy by the CPP to split swing voters and non CPP voters (not favour the CPP). The KPP founded by the KPPM and the KLP might serve this purpose. The leader of the KPPM, Serey Ratha, in a surprising move was granted an amnesty in 2015 and allowed to form a political party, despite being sentenced in absentia in January to seven years in prison under charges of terrorism, obstructing electoral procedures, inciting to overthrow the government and training armed forces in Thailand.<sup>124</sup> The KLP might also serve this purpose. The party was founded by a former CPP lawmaker Chea Chamreoun. Chea declared to the media that he neither wants to split the CNRP vote nor to serve the CPP. .<sup>125</sup>

The development of a competitive multi-party system also remains constrained because of an unequal level playing field for political competition. The CPP continues to exploit its political dominance to limit the competition of other political parties. The party is the best institutionalized party in Cambodia with a highly centralized organizational structure reaching down to the village

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<sup>119</sup> Phnom Penh Post: Ex-CNRP Official To Form New Political Party, 10.08.2015

<sup>120</sup> Southeast Asia Globe: Gang of Four: Cambodia's New Political Parties, 01.10.2015

<sup>121</sup> Cambodia Daily: Ranariddh Returns To Return as FUNCINPEC Party President, 02.01.2015

<sup>122</sup> Cambodia Daily: Ex-Military Commander Leaves Prince, Launches New Party, 04.02.2016; Cambodia Daily: Breakaway Party Becomes Country's 10<sup>th</sup> in Past Year, 06.02.2016

<sup>123</sup> Phnom Penh Post: KPPM 'will probably split vote', 09.03.2015

<sup>124</sup> Phnom Penh Post: KPPM Gets Green Light for Party Despite Jail Sentence, 07.03.2015

<sup>125</sup> Cambodia Daily: Former CPP Lawmaker Announces Plan to Form New Party, 26.11.2015

level.<sup>126</sup> Furthermore, the CPP controls not only the executive and judiciary, but also the military, the media and the state administration as outlined in this and previous annual democracy reports.<sup>127</sup> The boundaries between the government and party structures seem to be similarly blurred as in the communist party states of China and Vietnam. In Cambodia, they originate in the formation of a socialist party state based on the Marxist-Leninist principle of democratic centralism in the 1980s.<sup>128</sup> Although the party system has been gradually transformed to a predominant party system following the adoption of a new constitution in 1993 and the de jure introduction of a multiparty system, a change of the current system only possible, if the CPP were to split or if the CNRP were to govern alone or in a coalition with other parties after winning the next elections.

It is noteworthy that no leadership change within the CPP party leadership has been initiated in 2015 despite that the electoral losses in the national election in 2013. This indicates that the question of leadership popularity and credibility was at least one of the reasons for declining voter support for the CPP. Hun Sen was reappointed as CPP prime ministerial candidate for the next national election in 2018. In June 2015, Hun Sen was also elected as new CPP president after the incumbent Party president Chea Sim had passed away in the same month.<sup>129</sup> The current Minister of Interior, Sar Kheng and Senate President, Say Chhum were elected as CPP Vice-Presidents replacing Hun Sen. Hun Sen is now the longest serving non-monarchical head of government among the ten ASEAN member states since the second World War. With the exception of Brunei's Sultan (in power since 1967), he has now by-passed Singapore's former prime minister Lee Kuan Yew (1959-1990), Vietnam's former prime minister Pham Van Dong (1955-1987) and Indonesia's former President Suharto (1967-1998).

Within the CPP, concerns have arisen after the electoral losses of 2013 about a further loss of support forcing the party to change its political priorities. Besides reforms and repression of the CNRP the CPP has given Hun Sen and two of his sons, Hun Manet and Hun Manet, the main responsibility to spearhead a new CPP campaign to regain popularity. To this end the CPP has set out to appeal to young voters. At the party congress in February, youth leaders were added to the

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<sup>126</sup> Poeu, Sorpong: Party and Party System Institutionalization in Cambodia, in: Party System Institutionalization in Asia – Democracies, Autocracies and the Shadows of the Past (Eds. Hicken, Allen; Kuhonta, Erik Martinez), Cambridge University Press 2015. pp. 212-235

<sup>127</sup> COMFREL: Annual Report 'Democracy, Election and Reform', Phnom Penh March 2015. pp. 39-45;

<sup>128</sup> Chhim, Kristina: Die Revolutionäre Volkspartei Kampuchea von 1979 bis 1989, Frankfurt a. M. 2000. p. 113-121

<sup>129</sup> Cambodia Daily: Hun Sen New CPP President; Two New Vice-Presidents, 22.06.2015 As Next CPP President, Hun Sen's Power to Increase, 15.10.2013

party central committee resulting in 70 out of 545 members being under the age of 50.<sup>130</sup> Hun Sen's youngest son Hun Many, currently a CPP lawmaker and leader of the CPP-aligned Union of Youth Federations of Cambodia (UYFC), signaled the possibility that he could be a potential future candidate for the prime minister post, by shaping the CPP profile to appeal to young voters.<sup>131</sup>

A CPP campaign to reach out to the Cambodian diaspora, often perceived as the fiercest critics of the CPP, in order to undermine financial backing of the CNRP was also initiated. It is estimated that sixty percent of CNRP campaign funding for the 2013 national election came from the Cambodian diaspora, although they are not allowed to vote in Cambodia. CNRP demands for electoral reforms to allow them to vote were blocked by the CPP.<sup>132</sup> Hun Sen's, Hun Manet was appointed to lead the CPP overseas campaign. In 2015, he visited Australia, France, Germany, Switzerland and Belgium. New party committees have also been set up in Australia, Norway, France, the United States and Canada.<sup>133</sup> Overseas party branches have been requested to recruit new party members. Even diplomatic missions are used for CPP campaigns putting the legally required political neutrality of civil servants into question and indicating a misuse of state resources. In June, prime minister Hun Sen issued a directive to seven newly appointed ambassadors to chair the CPP working groups.<sup>134</sup>

The CNRP by contrast, at the end of 2015 appeared to have lost momentum in the political competition with the CPP. Although the recent judicial and physical harassment of CNRP officials and supporters could backlash on the CPP, the CNRP is plagued by internal weaknesses. Even though the CNRP has succeeded in the recent years to build a nationwide party organization and mobilize in 2013 a significant protest vote, it is not clear if these votes were only a protest vote against the RGC demanding reforms or a genuine vote for government change. Furthermore, the CNRP is less institutionalized than the CPP, lacks human resources and depends for its funding on the Cambodian diaspora as mentioned earlier.<sup>135</sup> With the exception of Sam Rainsy's stint as finance minister in the first legislature after the UNTAC elections and Kem Sokha's position as senior FUNCINPEC minister and Senator the CNRP has limited governance experience.<sup>136</sup> The CPP has

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<sup>130</sup> Vannarith, Chheang: After Thirty Years of Hun Sen, Where is Cambodia Now? East Asia Forum, 18.03.2015

<sup>131</sup> Hun Sen's Son Sets Sights on Cambodia's Top Office, 30.12.2015

<sup>132</sup> Cambodia Daily: Rainsy Calls for Overseas Voting for Cambodians; CPP Balks, 04.02.2016

<sup>133</sup> Phnom Penh Post: CNRP Reacts Manet's US Recruitment Drive, 19.01.2016

<sup>134</sup> Cambodia Daily: Rainsy Calls for Overseas Voting for Cambodians; CPP Balks, 04.02.2016

<sup>135</sup> Phnom Penh Post: CNRP Can't Ignore New Parties: Sokha, 03.10.2015

<sup>136</sup> Future Forum (President Ou Virak): Future Forum Domestic Politics Briefing Note - An Overview and Analysis of the Current Political Situation in Cambodia, Phnom Penh 03.02.2016. p. 10-13

ensured, through a variety of means over the last two decades, that any opposition member of parliament is either officially or unofficially excluded from key decisions.

This has created an uneven playing field for political competition that works to the disadvantage of the CNRP. The CNRP might also have lost voter support to new minor political parties. CNRP hardliners criticized the CNRP leadership for having compromised with the CPP suggesting that the party may fall into the same trap as FUNCINPEC.<sup>137</sup> FUNCINPEC won the lion's share of the vote in the UNTAC managed elections in 1993. Since that time it steadily lost support in a subservient role in successive coalition governments with the CPP (1998-2003). The party finally divided in 2006 and failed to win any seats in 2013.<sup>138</sup> Sam Rainsy was further criticized for not returning to Cambodia to face arrest and charges undermining his credibility and preventing the CNRP from regaining momentum in its political campaign.<sup>139</sup>

## 5.5 Public Political Discourses and Political Dialogue

The manner in which public political discourses were conducted initially showed signs of improvement, but destructive discourses gained more public attention leading to political agitation and violence. They appealed to pervasive political attitudes and feelings within the body politic ranging from envy, mistrust, hatred and fear to prejudices and intolerance and the Vietnamese control conspiracy. These kind of political discourses are of particular concern considering Cambodia's violent past. It provides opportunistic politicians with an ideal breeding ground for political agitation in order to manipulate Cambodia's public with the risk that political discrimination and conflicts turn violent. Despite a seven point code of conduct for the newly initiated culture of dialogue following the July 2014 political agreement, both parties engaged in destructive political discourses. The seven-point-code of conduct prohibits for example the use of the words and insults like '*Vietnamese Head with a Cambodian body*' (a term coined by the Khmer Rouge<sup>140</sup>), '*Communist Dictator*', '*Vietnamese Puppet*', '*Person who sells their nation*' and '*leader of the thieves*', and to avoid threats and intimidation such as the use of words, '*arrest and jail*' and '*war will occur*'.<sup>141</sup>

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<sup>137</sup> Phnom Penh Post: 'We're No FUNCINPEC', 21.04.2015

<sup>138</sup> Future Forum (President Ou Virak), p. 12

<sup>139</sup> Phnom Penh Post: CNRP Mulls Rainsy's Next Move, 18.11.2015; Cambodia Daily: As Ruling CPP Drives Wedge, CNRP Has Few Options, 10.11.2015 and Facing Arrest, Sam Rainsy Promises to Return Today, 16.11.2015 and Sam Rainsy Seeking Deal Before Return, 19.11.2015; Phnom Penh Post: Rainsy Will Not Return Tonight, 16.11.2015

<sup>140</sup> Kiernan, Ben: The Pol Pot Regime – Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979, Yale University 2002. p. 407

<sup>141</sup> Cambodia Daily: Parties Agree to Code of Conduct for 'Culture of Dialogue', 09.05.2015

The CNRP despite agreeing to the code of conduct and announcing in earlier statements to ‘*oppose violence, racism, xenophobia and discrimination*’<sup>142</sup> following criticism of its nationalistic anti-Vietnamese election campaigns for the national election in 2013<sup>143</sup> continued in 2015 with what can be best described as a populist nationalistic anti-Vietnamese campaign,<sup>144</sup>. Although, it was not observed that any of the above words and insults mentioned in the seven-point code had been used in CNRP political campaigns in 2015, the aim of the campaign was to discredit and delegitimize the ruling CPP because of its historic close relations with Vietnam and to mobilize support in that parts of the Cambodian public who share strong anti-Vietnamese sentiments..<sup>145</sup> The CNRP achieved this aim by demanding a revisionist foreign policy including border revisions with Vietnam and to side with China against Vietnam in the South China Sea dispute.<sup>146</sup> The latter is contrary to the constitution, Article 53 requiring the Kingdom of Cambodia ‘*to maintain resolutely a policy of neutrality and non-alignment*’<sup>147</sup>. The border revision targeted the currently ongoing demarcation between Vietnam and Cambodia, where in some border areas conflicts have emerged, which the CNRP uses to mobilize voter support.<sup>148</sup>

The CNRP achieved this aim by challenging a dual foreign policy including border revisions with Vietnam and siding with China against Vietnam in the South China Sea dispute.<sup>149</sup> The government has for some time supported China’s foreign policy goals in the region. The policy is contrary to the constitution, Article 53 requiring the Kingdom of Cambodia ‘*to maintain resolutely a policy of neutrality and non-alignment*’<sup>150</sup>. The border revision targeted the currently ongoing demarcation between

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<sup>142</sup> Cambodia Daily: CNRP Reassures Critics Party Is Against Xenophobia, 29.08.2013

<sup>143</sup> CCHR: Open Letter from CCHR Expressing Grave Concern Over Discriminatory Language Reportedly Used By The CNRP, 13.12.2013; Phnom Penh Post: Anti-Vietnam Talk ‘Alarms’ (sic UN) Envoy, 17.01.2014

<sup>144</sup> Vickery, Michael: Kicking the Vietnam Syndrome in Cambodia – Collected Writings 1975-2010, Chiang Mai 2010, retrieved from <http://michaelvickery.org/> on 16.02.2016

<sup>145</sup> Future Forum (President Ou Virak): Future Forum Domestic Politics Briefing Note - An Overview and Analysis of the Current Political Situation in Cambodia, Phnom Penh 03.02.2016. p. 10-13; Cambodia Daily: In CNRP Campaign, A Subtler Approach to ‘Vietnamese Issue’, 05.07.2015;

<sup>146</sup> Cambodia Daily: Rainsy Says CNRP Backs China, Not Vietnam, in Sea Dispute, 11.01.2014

<sup>147</sup> Cambodian Constitution, Unofficial English Translation Version Supervised by the Constitutional Council, Phnom Penh March 2010

<sup>148</sup> Cambodia Daily: Vietnam, Cambodia to Inaugurate Border Demarcation Posts, 25.12.2015; Chheang Vannarith: How Cambodian Nationalism Is Driving Border Disputes With Vietnam, East Asia Forum 16.10.2015; Future Forum (President Ou Virak): Future Forum Domestic Politics Briefing Note - An Overview and Analysis of the Current Political Situation in Cambodia, Phnom Penh 03.02.2016. p. 11

<sup>149</sup> Cambodia Daily: Rainsy Says CNRP Backs China, Not Vietnam, in Sea Dispute, 11.01.2014

<sup>150</sup> Cambodian Constitution, Unofficial English Translation Version Supervised by the Constitutional Council, Phnom Penh March 2010

Vietnam and Cambodia, where in some border areas conflicts have emerged<sup>151</sup> Between June and August the CNRP initiated a campaign against alleged territorial encroachment by Vietnam, demanding a revision of border treaties made in 2005, the creation of a new border committee, and an intention to take alleged border violations to the International Court of Justice.<sup>152</sup> In order to gain a wider public audience a number of public marches were orchestrated by CRNP lawmakers in the alleged disputed border areas. Participants in the marches were paid by the CNRP.<sup>153</sup> The CNRP border campaigns were accompanied by alleged claims that the RGC used wrong or faked maps to demarcate the borders.<sup>154</sup> In one instance, 250 CNRP supporters tried to push through alleged disputed territory controlled by Vietnam leading to a brawl in which seven Vietnamese were injured. The Vietnamese government denounced the CNRP activists as ‘*extremists*’.<sup>155</sup> In another incident Cambodian activists were beaten by Vietnamese villagers while inspecting an alleged disputed border area.<sup>156</sup> In this regard, it has to be mentioned that the CNRP leadership has a history of anti-Vietnamese nationalist rhetoric leading to violence during protests against the 1998 election results which likely sparked anti-Vietnamese riots leading to the killing of four ethnic Vietnamese.<sup>157</sup>

At first the CPP countered the CNRP border campaign with campaigns and discourses appealing to the CNRP to call a halt<sup>158</sup>, and campaigns to clarify the border issue. However, CNRP persistence led to CPP warnings in August<sup>159</sup> and judicial repercussions against the CNRP.<sup>160</sup> On 15<sup>th</sup> August, CNRP Senator Hong Sok Hour, who focused on the technical interpretation of the border map was arrested for allegedly posting on Facebook a forged border treaty as explained earlier in the report. Prime minister Hun Sen ordered his arrest for treason which was later turned into charges for the

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<sup>151</sup> Cambodia Daily: Vietnam, Cambodia to Inaugurate Border Demarcation Posts, 25.12.2015; Chheang Vannarith: How Cambodian Nationalism Is Driving Border Disputes With Vietnam, East Asia Forum 16.10.2015; Future Forum (President Ou Virak): Future Forum Domestic Politics Briefing Note - An Overview and Analysis of the Current Political Situation in Cambodia, Phnom Penh 03.02.2016. p. 11

<sup>152</sup> Cambodia Daily: CNRP Demands New Border Committee, Treaty’s Cancellation, 27.06.2015

<sup>153</sup> Phnom Penh Post: Graft Agency Eyes Opposition Border Trips, 12.08.2015

<sup>154</sup> Radio Free Asia (RFA): Disputes Continue Over Cambodian Government’s Official Map, 28.08.2015

<sup>155</sup> Phnom Penh Post: Hanoi Slams ‘Extremists’, 02.07.2015; ; Radio Free Asia (RFA): Cambodians and Vietnamese Clash Over Borderland, 02.06.2015

<sup>156</sup> Radio Free Asia (RFA): Vietnamese Villagers Beat Cambodian Activists Inspecting Disputed Border, 29.06.2015

<sup>157</sup> Cambodia Daily: Come Election Time, Xenophobia Proves Expedient, 26.07.2013

<sup>158</sup> Voice of America (VOA): Foreign Minister Calls on Opposition to End Its Border ‘Campaign’, 26.08.2015

<sup>159</sup> Cambodia Daily: Border Chief Warns CNRP Lawmaker Over Map Accusations, 29.08.2015 and prime minister Threatens Legal Action Against Map Critics, 22.08.2015

<sup>160</sup> Radio Free Asia (RFA): Ruling Party Official Writes Off Sam Rainsy’s Commitment to Cambodia’s ‘Culture of Dialogue’, 19.08.2015

use and forging of faked documents and incitement.<sup>161</sup> Four days later, prime minister Hun Sen used defamatory language directed against opposition leader Sam Rainsy referring to him as a *'leader of the thieves'*<sup>162</sup> and a *'liar'*<sup>163</sup> despite the fact that the opposition leader announced that the CNRP would tone down its criticism of the CPP on border issue.<sup>164</sup> The anti-CNRP campaign however continued culminating in a 2,000 strong rally in front of the National Assembly calling for the removal Kem Sokha to step down from his position as First NA Vice-President. After the anti-CNRP protests, two CNRP lawmakers were beaten and severely injured, although the RGC condemned the attack and three RCAF members were eventually arrested.<sup>165</sup> Sam Rainsy denounced the protests accusing Hun Sen of having orchestrated the protests and using *'fascist methods'*<sup>166</sup> in retaliation for anti-government protests during a visit of the prime minister in Paris. The anti-CNRP campaign ended with the expulsion of Kem Sokha as First Vice-President from the National Assembly and arrests warrants for opposition leader Sam Rainsy on different charges.

It is important to note that in 2015 Kem Sokha had toned down his criticism of the CPP over the issue. A CPP aligned NA spokesperson defended the actions in a public document titled *'Statement of the Spokesperson of the National Assembly of Cambodia'* claiming that Kem Sokha has *'violated the code of ethics of parliamentarians and the constitution and used his role as First Vice-President of the National Assembly to attack the National Assembly and incite violence'*<sup>167</sup> It also condemned the fourteen CNRP members and activists who were arrested and charged as *'criminals'*, and criticized the European Parliament for the its resolution expressing concerns over the events: *'...that the move of the European Parliament pushes a country into applying its prejudice without searching for the truth is not an effective solution, especially considering criminals or those who committed criminal misdeeds as politicians is an unjust act which is unacceptable to us'*.<sup>168</sup>

The CNRP continued to reference the past civil war and the totalitarian rule of the Khmer Rouge. In a comment published by the Cambodia Daily, Sam Rainsy claimed that Vietnam was responsible

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<sup>161</sup> Phnom Penh Post: Senator Hong Sok Hour Arrested, 15.08.2015; Cambodia Daily: PM Orders Senator's Arrest over Facebook Post, 14.08.2015

<sup>162</sup> Cambodia Daily: Hun Sen Calls Rainsy 'Leader of the Thieves', 19.08.2015; Phnom Penh Post: PM Lashes Out At Opposition, 19.08.2015

<sup>163</sup> Cambodia Daily: Hun Sen Calls Rainsy a Liar Over Still Jailed Activists, 03.09.2015

<sup>164</sup> Cambodia Daily: CNRP To Order Lawmakers Silent on Vietnam Border Issue, 14.09.2015

<sup>165</sup> Joint CSO Statement: Condemnation of Violence Against Members of the Fifth Mandate National Assembly, 28.10.2015; Phnom Penh Post: Three RCAF Members Charged For Beatings, 05.11.2015

<sup>166</sup> Phnom Penh Post: CPP Oust Kem Sokha From Assembly Post, 31.10.2015

<sup>167</sup> NA Spokesperson: Statement of the Spokesperson of the National Assembly of the Kingdom of Cambodia (Unofficial Translation), 28.11.2015, retrieved on 20<sup>th</sup> February 2016

<sup>168</sup> Ibid.

for the rise of the Khmer Rouge, stating that ‘...without the initial and crucial support of from the communist Vietnamese in the context of the Vietnam War, the Khmer Rouge would not have been able to come to power and to commit their crimes’.<sup>169</sup> In a speech one day ahead of the 24<sup>th</sup> anniversary of the Paris Peace Accords, the prime minister outlined a different narrative, claiming that the US ‘at least must take moral responsibility’<sup>170</sup> and ‘if there was no 1970 coup, we would not have had the Pol Pot regime, and if there is no Pol Pot regime, then we would not have fought the Pol Pot regime and there would be no civil war and no requirements for the Peace Agreement’<sup>171</sup>. This political discourse once more demonstrates a willingness on behalf of political elites to use the legacies of the past, civil war and the Khmer Rouge, for political purposes today. Alternative narratives based upon reconciliation with past actions have yet to be developed.

Other less damaging, but nonetheless heated public debates concerned controversies about the meaning of the culture of dialogue continued. These included CNRP rhetoric about what the party would do when in government, and how it would bring about a peaceful change of government. CNRP political campaigns were thus perceived by the CPP as not honouring the rapprochement between the parties. In short, for the CPP this meant an end to political attacks and criticism by the CNRP and opposition groups of the CPP and RGC’s system of governance within the political space gained after the July 2014 agreement. The CNRP by contrast perceived its campaigns against the CPP and RGC as legitimate political competition and a function of an opposition party in a democratic process. In April, Kem Sokha publically announced in a campaign in Takeo province ‘that there will be no revenge when the CNRP wins [sic] election to lead the government’<sup>172</sup>. In September, Sam Rainsy announced that the CNRP will ‘provide justice to the victims, and gather lands that companies and tycoons have robbed and stolen from people to give them back to the former owners’<sup>173</sup>. In October, Sam Rainsy promised civil servants and soldiers that they will keep their job in case of a government change and can expect salary raises.<sup>174</sup> The CPP countered the CNRP campaign with warnings to Kem Sokha that the National Assembly could vote to replace him as first Vice-President of the National Assembly.<sup>175</sup> Similar warnings were made in December

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<sup>169</sup> Sam Rainsy: Vietnamese Meddling Helped the Khmer Rouge Take Power, 11.01.2016

<sup>170</sup> Prime minister Hun Sen cited from Phnom Penh Post: PM Reflects On Civil War’s Origin, 23.10.2015

<sup>171</sup> Ibid.

<sup>172</sup> Kem Sokha cited from Cambodia Herald: No Revenge When CNRP Takes Power: Kem Sokha, 27.04.2015

<sup>173</sup> Sam Rainsy cited from Cambodia Daily: Despite PM’s Attacks, Sam Rainsy Pushes Plan To Seize Land, 28.09.2015

<sup>174</sup> Cambodia Daily: CNRP Promises To Not Remove Civil Servants If Victorious, 05.10.2015

<sup>175</sup> Cambodia Daily: Hun Sen Warns Kem Sokha to ‘Be Careful’, 10.09.2014

2014<sup>176</sup>, March 2015<sup>177</sup> and May 2015<sup>178</sup>. In October, prime minister Hun Sen warned that a government change would lead to war and denounced Sam Rainsy's policies to be no different from those propagated by Pol Pot.<sup>179</sup> In November, the prime minister launched a personal attack against Sam Rainsy calling him '*a son of a traitor*' referring to the father of Sam Rainsy, Sam Sary. His father was a government official and ambassador to the United Kingdom under King Norodom Sihanouk, but had to flee Cambodia after he was accused of having plotted against him.<sup>180</sup>

The political discourses and campaigns of the major political parties contrasted with a more constructive approach within civil society. It was observed that a number of civil society organizations, think-tanks, individuals and minor political parties have advanced public democratic political discourses in 2015 extending Cambodia's political pluralism providing a platform to foster the development of a democratic political dialogue.

## **5.6 Women and Youth Participation**

Women and youth continue to lack the means for effective political participation and are underrepresented. Although female representation in elected bodies on a local level has increased in the past decade, the RGC continues to fall short of the Gender Millennium Development Goal to achieve 25 percent female representation in the commune councils, and 30 percent in the National Assembly. Currently, only 18 percent of commune councillors and 19.5 percent of parliamentarians are women. Positively, in 2015, the number of female commune councillors increased from 2,038 to 2,051 councillors to replace outgoing commune councillors. Also, the number of female commune chiefs increased slightly from 95 to 108. In the National Assembly however the number of female MPs decreased from 25 to 24 MPs after a female CPP MP resigned for health reasons, and was replaced by a male counterpart.<sup>181</sup>

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<sup>176</sup> Cambodia Herald: Hun Sen Warns to Remove Kem Sokha From His Post As Deputy President of the National Assembly, 04.12.2014

<sup>177</sup> Cambodia Daily: PM Warns Of Legal Action Against Kem Sokha, 19.03.2015

<sup>178</sup> Phnom Penh Post: Hun Sen Threatens to Strip Kem Sokha of Role, 20.05.2015

<sup>179</sup> Cambodia Daily: Hun Sen Warns Opposition of Backlash Armed Forces, 20.10.2015 and Hun Sen: Sam Rainsy No Different Than Pol Pot, 09.10.2015; Bangkok Post: Hun Sen Warns of War If Opposition Party Rules Cambodia, 19.10.2015

<sup>180</sup> Phnom Penh Post: PM Launches Personal Attack On Rainsy, 13.11.2015

<sup>181</sup> COMFREL Gender Watch: Summary of Findings - Political Gender Watch Report: Assembly and Women Parliamentarians' and Empowerment of Women Commune Councillors in their performance at local levels in 2015

COMFREL found that in 2015 fewer female MPs made field visits than their male counterparts and intervened less often to resolve citizen problems than in 2014. Though the number of field visits conducted by female MPs increased slightly when compared to the previous year. Seventeen out of the current 24 female MPs (a decrease to 2014 when it were 25) made a total of 250 of the 1004 reported MP field visits in 2015, which is twelve field visits more than in 2014 (238); 197 field visits involved attending meetings, gift-giving's and inaugurations, 17 concerned accompanying dignitaries, 17 strengthening internal party organization and networks, 12 attending public forums and 7 intervening and solving problems. But fewer interventions by female MPs were observed in 2015. When comparing political activities of female MPs of the CNRP and the CPP, it was found that female CPP MPs were more active than their male counterparts. For the CNRP it was found that female CNRP MPs made 165 field visits, more than their female counterparts in the CPP who made 85.<sup>182</sup>

As already examined in the previous annual report, youth continue to be underrepresented in local and national elected bodies and lack the means for political participation<sup>183</sup> Currently, only four youth candidates are represented in the National Assembly, three are from the CPP, one from the CNRP. Local level representation has slightly improved. In the 2012 commune election the number of elected youth councilors and commune chiefs increased from 163 youth councilors in 2007, to 615 youth councilors in 2012. However, this is equal to only 5 percent of the total 11,459 commune counselors elected. Current surveys indicate that youth participation in Cambodian politics is generally low, though that trend could change in the future. A recently conducted survey on *'Youths Perspective on Youth Candidates for National and Sub-National Election Bodies'*<sup>184</sup> by the Youth Development Resource Centre (YRDP) in December 2015 found in a nationwide sample of mainly urban and educated youth that 95 percent of youth interviewed said they will vote in the next commune and national elections in 2017 and 2018. However, the actual voter turnout of youth voters in the past commune and national elections was much lower. According to the survey only 57 percent aged between 25-30 years claimed they voted in the commune elections, followed by 42 percent of youth aged between 21-24 years. For the national elections in 2013, 78 percent of youths

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<sup>182</sup> Ibid.

<sup>183</sup> COMFREL: Annual Report Democracy, Election and Reform, March 2015. pp. 38-39

<sup>184</sup> Youth Resource Development Program (YRDP): Summary Report - Youths Perspective on Youth Candidates for National and Sub-National Election Bodies, Phnom Penh November – December 2015

from 25-30 years voted but only 57 percent of youth aged between 21-24 years.<sup>185</sup> Past surveys on youth political participation including COMFREL findings produced similar results.<sup>186</sup>

Reasons for the lower youth voter turnout in the past commune and national elections according to the recent YDRP survey could be that 64 percent of youth interviewed claimed that political parties are more interested in youth votes than promoting youth leadership; 89 percent said that political parties should take the youth more seriously and be more open to youth development; 71 percent found that volunteering with an NGO is a better way to participate in politics than joining a political party. Another reason could be a lack of civic involvement. Only 7 percent stated in the YDRP survey to be a member of a youth organization, 8 percent members of a political party and only 7 percent members of a community based organization.<sup>187</sup> A nationwide survey in 2013 conducted by the International Foundation for Electoral Systems (IFES) found that information and knowledge about political parties' platforms and other activities remain limited among youth. Those in the youngest age group (18-24) had the highest percentage reporting a need for more information on each aspect of the electoral process. The next youngest age group (25-34), also expressed a disproportionately high need for more information. On a positive note, Cambodians believe younger citizens, those aged 18-30, should have more of a role in how the country is governed, (86%) and are supportive of increasing the proportion of youth representation in the National Assembly and commune councils (92%).<sup>188</sup>

## 6. Democratic Elections

Substantial reforms of electoral laws and electoral bodies, which commenced following the political agreement of July 2014, were finalized in 2015. These included the adoption of a new *Law on the Organization and Functioning of the National Election Committee (NEC)*, a new *Law on the Elections of Members of the National Assembly* (LEMNA) in March and a new *Law on the Election of Commune Council Members* (LEMCC) in October, the formation of a new National Election Committee (NEC) in

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<sup>185</sup> Ibid., p. 4

<sup>186</sup> CDRI: The Enduring Gap: Decentralization Reform and Youth Participation in Local Rural Governance, Working Paper Series No. 94, Phnom Penh July 2014. pp. 23-24; UNDP: Youth and Democratic Citizenship in East and Southeast Asia – Exploring Political Attitudes of East and Southeast Asian Youth Through the Asian Barometer Survey – Summary Report 2014. p. 8; COMFREL: Final Assessment and Report on 2012 Commune Council Elections, October 2012, p. 50

<sup>187</sup> Youth Resource Development Program (YRDP): Summary Report - Youths Perspective on Youth Candidates for National and Sub-National Election Bodies, Phnom Penh November – December 2015. p. 4

<sup>188</sup> Serpe, Lauren: Knowledge and Opinions of the Electoral Process in Cambodia's Pre-Election Period, Washington D. C. 2013, p. 5,8

April, and the implementation of a new voter registration system starting in November with a pilot test. It was expected that the reforms will increase confidence in the electoral process and will help to prevent future electoral conflicts. Unfortunately the electoral reform process and its outcomes fell short of these expectations. A number of provisions in the new LEMNA could in effect worsen the prospects for an improved electoral process. Furthermore, the composition of the newly restructured National Election Committee raises ongoing concerns over the impartiality and independence of the electoral body. Although the new electoral body in principle is seen as a significant improvement to the previous one. Reform of the voter registration could improve the electoral process, but it is too early to determine its effectiveness.

## 6.1 Reforms of Electoral Laws

The *Law on the Elections of Members of the National Assembly*<sup>189</sup> (LEMNA) was approved unanimously without the plenary debate in March by both CNRP and CPP lawmakers. . There was very little public consultation and no major changes to the draft version as demanded by civil society organizations.<sup>190</sup> It followed the adoption of a new *Law on Elections of Members of Commune Councils*<sup>191</sup> (LEMCC) by only CPP law makers in October again with similarly little public consultation, and demands for changes were ignored. Though the adoption of the new laws revealed improvements in inter-party relations of the CPP and CNRP considering the preceding political crisis, the new laws only partially meet the expectations of CSOs. A number of new provisions were incorporated into the new laws, which could impinge on the right of freedom of expression and the right to political participation of members of national non-governmental organizations and associations and violates the principle of equality before the law. The new laws also prohibits political parties from boycotting the inauguration of a new parliament and recognizes political parties as a legal entity responsible for misconduct of individual members, limits the campaign periods, and abolished a procedure to determine changes in the number of NA seats.

There were 21 provision changes related to amendments of the law on commune/sangkat council elections: 6 changes are positive while 10 changes are negative and 5 changes are unclear. Among the

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<sup>189</sup> Draft Proposed Law on Amendments to the Law on Election of Members of the National Assembly , 08.03.2015

<sup>190</sup> The Electoral Reform Alliance (ERA): CSO Recommendations and Concerns On the Proposed Draft Law on the Elections of Members of the National Assembly – (LEMNA) and Freeness of Elections, 17.03.2015

<sup>191</sup> Cambodia Daily: National Assembly Votes in Two New Measures; CNRP absent, 31.10.2015; a translation of the new commune election law in English is not yet available

negative, 3 of 10 key changes were agreed upon by lawmakers from both parties to reduce the time for official election campaigns and limit the space for election campaigns. The CPP and CNRP agreed to reduce the number of days for the election campaign from 30 to 21 in national elections and from 15 to 12 days in commune elections. During commune elections campaigns may only be held by political parties and candidates within their commune.

The new LEMNA and LEMCC prohibit all local non-governmental organizations or associations and all international associations or organizations from participating in electoral campaigns connected with political parties. Article 84 of the new LEMNA and article 74 of amendment of LEMCC stipulates that ***Local non-governmental organization or association and international association or organization performing works in the Kingdom of Cambodia or foreigners shall be neutral and impartial in the election of members of the National Assembly. .... shall not do any activity, directly or indirectly, as follows: Initiating or participating in electoral campaigns of a political party or a candidate; initiation or participation in electoral campaigns includes: persuading or mobilizing the people to participate in electoral campaigns in support of a political party or a candidate; participating in rallies or meetings of a political party or a candidate; participating dissemination of policy or electoral campaign materials of a political party or a candidate, joining as a member of electoral campaign committee of a political party; releasing a statement or doing any activities with the aim of supporting or showing bias towards or against a political party or a candidate. Releasing a statement, acting in support of or showing bias towards includes: polling in favor of a political party or a candidate, writing or making interview with the media in support of a political party or a candidate; direct or indirect remarks or writing aiming to insult a political party or a candidate; displaying or posting pictures or documents on the vehicles used by their vehicles or in the premises of their workplace purportedly supporting a political party or a candidate; providing means in budget, materials or equipment, human resource or other means to support a political party or a candidate, including: providing vehicles of any kind as means for electoral campaigns of a political party or a candidate, Providing money, materials and equipment for use for the people to participate in the campaign activities in support of a political party or a candidate, Providing, directly or indirectly, money, materials and equipment for campaigns ‘rallies, public meetings, arts performance and printing campaign materials to support a political party or a candidate’.*** Military personnel, police, civil servants and local authorities by contrast are allowed to participate in election campaigns of any political party. Article 83 (and similar provisions in the new LEMCC) states that *‘after finishing working hours or outside working hours or while not performing work in their formal capacity, civil servants, local authorities at all levels, Cambodian Royal Armed Forces, National Police and courts officials can participate in electoral campaign activities in support of*

*a political party or a candidate, but they shall not wear uniforms, not carry weapons and not do anything that causes threats’.*

The above passages in bold letters of Article 84 appear to prohibit all actors other than political parties, civil servants, members of the armed forces and police from participating in electoral campaigns, whereas leaving it open to what the exact meaning of *‘non-governmental organizations and associations’* is, and provides no exception for non-governmental or associations to participate in election campaigns. Also, it leaves the new law open to interpretation, if the monitoring of election campaigns is considered to be political participation or not. Further, the prohibition on the release of any verbal or written statements showing bias or insults towards a political party or candidate is open to wide interpretation. Ambiguous in this regard is the last passage of the article about the question of what kind of events supported by non-governmental organizations and associations can be considered as an election campaign. Also open to wide interpretation are activities that are only prohibited during the official election campaign period. LEMNA 137 and article 159 in the amendment of LEMCC adds the prohibition *‘during the polling, vote counting and announcement of the election results, local nongovernmental organizations or associations and international associations or organizations performing works in the Kingdom of Cambodia or foreigners shall be neutral and impartial according to the provisions mentioned in article 84 of this law. The provision of paragraph 1 above shall not obstruct the exercise of freedom of expression according to the law in force’.*

Further concerns are raised about penalties for violations of Article 84 and 137 in the new LEMNA (and similar provisions in the new LEMCC). They appear to contradict the principle of equality before the law. According to LEMNA Article 149: *‘Any local non-governmental organization or association and international association or organization performing works in the territory of the Kingdom of Cambodia that violate, directly or indirectly, the provisions of Article 84 of this law shall be fined from 10,000,000 (ten million) Riels to 20,000,000 (twenty million) Riels by the National Election Committee. The abovementioned responsibility is not exempt from the responsibility of a physical person for the same act above or other crimes provided for in the Penal Code. 159’* and article 159 states that *‘Any local non-governmental organization or association and international association or organization performing works in the Kingdom of Cambodia that violates Article 137 of this law shall be fined from 10,000,000 (ten million) Riels to 20,000,000 (twenty million) Riels by the National Election Committee’.* The new LEMNA provides no explicit provisions for penalties of civil servants and members of armed forces and police violating Article 82 or 83 prohibiting their participation in election campaigns, though they might be referred to Article 147 stating that *‘The National Election*

*Committee shall remove the name of any civil servant or responsible person from the voter list for 05 (five) years and shall request the head of their respective institution to impose administrative sanctions, ranging from placement in vacant positions without pay to dismissal from positions if he/she violates article 84 of this Law’.*

The new LEMNA further limits, according to Article 72, the official election campaign period to only 21 days instead of 30 days as practiced since 1998. Also in article 70 of the amendment of LEMCC the election campaign period has been reduced from 15 to 14 days. The new limitations of the official election campaign period could further undermine an equal level-playing field for political competition, in particular for the new and minor political parties.

To effectively reach out to voters, election campaigns in Cambodia require more time to organize public gatherings, rallies and door-to-door visits. The conduct of campaigns is often constrained by logistical difficulties.<sup>192</sup> The CPP on the other hand can rely on local state authorities like village and commune chiefs to reach voters. Limitations for such campaigns provides only Article 158 (and similar provisions in the LEMCC) stating that *‘any person, who uses materials or means of transportation that belong to the State to carry out campaign activities for a political party or a candidate, shall be warned in writing. In case of non-compliance with the above-said warning, the National Election Committee shall fine him/her from 5,000,000 (five million) riels to 10,000,000 (ten million) riels’.*

Further problems could be encountered in the electoral process with the new LEMNA provisions (and similar provisions in the new LEMCC) concerning holding political parties responsible for actions of party members in decision-making positions, and allowing the NEC to exclude the political party from the electoral process. Article 162 of the draft LEMNA says that offenses committed by representative[s] or individual of parties who have the right to make decisions for the party in the party’s by-laws will be offenses committed by the party as an organization for the benefit of that political party. There are many articles -142,143, 153, 155, 156 of the draft LEMNA that can be used to declare a party ineligible from running if they were found to have committed such offenses. For instance article 152 states that the NEC must discipline *‘anyone who uses any means to publicly insult to other political parties and/ or ...during the election campaign period’.* Article 153 states that

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<sup>192</sup> COMFREL: Annual Report Democracy, Election and Reform, March 2015, pp. 27-28

*'any political party that commits the offenses provided in Article 152 ...this election contesting party shall be deleted from running in the election by the NEC'*.<sup>193</sup>

A LEMNA provision forcing political parties to accept contested election results remains problematic. Article 138 states that a *'party boycotts the first sitting of the National Assembly as convened by the King'* or *'boycotts and refuses to participate in the National Assembly meeting to announce the validity of its members'* or *'boycotts and refuses to participate in the swearing-in-ceremony, the candidate list and candidate of such political party who is announced to be elected is invalid and not qualified anymore'*. The seats are then accordingly redistributed to other political parties. It is open as to whether this provision can prevent electoral conflicts. If this law would have been applied in 2013 the political crisis would have been prolonged; leaving almost three millions voters who have voted for the CNRP excluded from the political process for the whole fifth legislature, and would have led to a one-party parliament. The provision would only work when more than two political parties are elected to parliament, but this would still put the democratic process into question, which requires the inclusion of all elected political parties.

The new LEMNA also ignores recommendations made by COMFREL to increase the number of National Assembly seats following demographic changes. In the previous annual democracy report it was found that the number of NA seats could be increased from 123 to 133 seats based on the formula provided in the old LEMNA, Article 7. However, the new LEMNA no longer includes a procedure to determine the number of NA seats following demographic changes, but provides only a fixed number of seats for each province. It is unknown how the new seat allocation was determined. The negotiations between the CPP and CNRP were stuck in February on this issue.<sup>194</sup> The CNRP wanted to at least keep the review mechanism in the electoral law. However, the new LEMNA Article 6 only states that the NA should have at least 125 seats, increasing the number of NA seats by two only. The two seats were allocated to the province of Sihanouk Ville to the advantage of the CPP.

## **6.2 Reforms of the National Election Committee (NEC)**

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<sup>193</sup> The Electoral Reform Alliance (ERA): CSO Recommendations and Concerns On the Proposed Draft Law on the Elections of Members of the National Assembly – (LEMNA) and Freeness of Elections, 17.03.2015

<sup>194</sup> COMFREL: Annual Report Democracy, Election and Reform, March 2015. pp. 29-30

A new NEC had been successfully formed in April 2015. The new NEC members were approved unanimously in a package vote of CNRP and CPP lawmakers. The new *Law on the Organization and Functioning of the National Election Committee*, adopted in March, requires a bipartisan nine-member composition of the NEC under the auspices of the National Assembly. The CNRP holds now four positions, the CPP four positions and the ninth member need to be a compromise candidate. For the latter position, Hang Puthea, former Executive Director of the election observer organization 'Neutral and Impartial Committee for Free and Fair Elections' (NICFEC) was selected. The new NEC and respective law appear to be a significant improvement to the previous law, though some shortcomings in regard to the impartiality of the NEC remain. Also, the law-making process for the new NEC law lacked public consultation and did not include consultations with minor political parties. However, the new NEC law provides more influence for the opposition and prevents with the election of a neutral ninth member, the ruling party from holding a majority in the NEC decision-making process as was the case in the past. The NEC is now also accountable to the National Assembly. In the past the Ministry of Interior decided the composition of the NEC. Positively, a number of provisions in the new law strengthen the accountability of the election body.

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Concerns however remain. The current provisions still provide the executive discretionary power over the NEC budget and the organization and function of the Secretary-General on national and provincial/municipal level (Article 56 and 57). The organization and functioning of this office and subordinated offices are regulated by the executive not the NEC, which may provide the RGC discretionary power to influence the NEC. There is also no clear provision providing the NEC the power to dismiss the Secretary-General.<sup>196</sup> The former NEC Secretary-General Tep Nytha was reappointed for the position despite demands to replace him in order to improve the creditability of the new election body. Tep Nytha has been the NEC Secretary-General since 2002 administering the 2003, 2008 and 2013 elections and was often alleged to be responsible for election irregularities. Before the NEC work, Tep Nytha had served on the CPP's Youth and Propaganda Commission. Who exactly voted for Tep Nytha in 2015 among the nine NEC members was not disclosed to the public. The NEC-Chair and former CPP law-maker Bun Hok defended the re-appointment because of his work experience, whereas the CNRP Vice-Chair, Kuoy Bunroeun explained to media to respect the decision and explained further that the Secretary-General is only an assistant under the

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<sup>195</sup> see Appendix of COMFREL: Annual Report Democracy, Election and Reform, March 2015

<sup>196</sup> Ibid.

NEC authority. His statement contradicted a statement of his party deeply regretting his re-appointment. More concerns remain over new provisions for the NEC budget. They may also allow the executive to exercise discretionary power over the NEC. According to the new NEC law, the election budget account named ‘Trust Fund Account for Election’ needs to be ‘...integrated into the national budget to be directly credited to this special account’<sup>197</sup>.

### **6.3 Reforms of the Voter Registration**

Significant progress has been made in reforming the voter registration in 2015. The manual voter registration system has been replaced by a digital voter registration system including biometric data and photos of each voter. In November, the new system was tested. COMFREL held a roundtable discussion to assess the new voter registration system.<sup>198</sup> As outlined in previous COMFREL reports, the voter registration has been one of the major weaknesses of the election process leading to electoral conflicts and doubts about the accuracy of election results. A significant number of voters were disenfranchised from their right to vote in the past. COMFREL estimated that in 2013 alone 1.25 million voters were disenfranchised.<sup>199</sup> The new voter registration system provides a more effective means to register voters and includes safeguards making it less likely that voters are disenfranchised, and that voters can cast votes on behalf of others.

However, concerns remain. The pilot for the voter registration system, conducted by the NEC in November revealed that a lack of electricity and internet access in rural areas, as well as a lack of voter identification documents could lead to problems. In the pilot test only fifty percent of the expected total number of registered voters could be enrolled. The NEC explained that the low registration was caused by natural factors (heavy rains and storms) and lack of information preventing citizens from participating in the pilot project. COMFREL found also found that other factors including complicated and time-consuming formal procedures and a lack of information among citizens caused problems.<sup>200</sup> The NEC also raised concerns about a lack of qualified

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<sup>197</sup> see Appendix of COMFREL: Annual Report Democracy, Election and Reform, March 2015

<sup>198</sup> COMFREL: Press Release ‘The Findings of NEC Pilot Test on Voter Registration and Recommendations on 2016 Voter Registration, 03.12.2015

<sup>199</sup> COMFREL: Final Report and Assessment National Assembly Election 2013, December 2013. pp. 47-52; Serpe, Lauren: Knowledge and Opinions of the Electoral Process in Cambodia’s Pre-Election Period, Washington D. C. 2013. p. 7

<sup>200</sup> Phnom Penh Post: Early Issues Crop Up in Voter Registration Test, 17.11.2015

personnel. In January 2016 the NEC appealed to computer-literate students and civil servants to operate the new system.<sup>201</sup>

Most problematic in this regard is that to this day not all citizens have national ID cards in order to be able to register as voters under the new LEMNA. The Ministry of Interior is currently falling behind in issuing new biometric national ID to allow an accurate voter registration. As of June 2015 only about 13 million ID cards were in circulation of which only 4.6 million were biometric, not to speak of those who have no ID cards. The NEC has expressed concerns that the old ID cards issued before 2015 contain no biometric data and consequently do not allow proper verification of registered voters. In addition many citizens do not have national ID cards forcing the NEC already in 2015 to appeal to the Ministry of Interior to allow those voters to register with birth certificates.<sup>202</sup> Considering the technical problems ahead, particularly in issuing ID cards and overcoming technical and human resource problems to effectively implement the new system, it is yet too early to determine the effectiveness of current reforms. Most likely these difficulties will persist until the next commune council election in 2017, but might be overcome in time for national elections in 2018. The European Union and Japan have committed technical and financial assistance for the voter registry reform.<sup>203</sup>

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គុំផ្រេល COMFREL

the Committee for Free and Fair Elections in Cambodia (COMFREL)

#138, Street 122, Teuk Laak, Toul Kork, Phnom Penh, Cambodia

Tel: 855-23-884-150/12-942-019

Fax: 855-23-883-750/23-885-745

E-mail: [comfrel@online.com.kh](mailto:comfrel@online.com.kh) or [comfrel@comfrel.org](mailto:comfrel@comfrel.org)

Website: [www.comfrel.org](http://www.comfrel.org)

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