

# **2009 Report**

## **Cambodian Democracy, Elections and Reform**

**From: Committee for Free and Fair Elections in Cambodia  
(COMFREL)**

**February 2010**

## TABLE OF CONTENT

2009 Report on Cambodian Democracy, Elections and Reform.....	1
1. Election Reform .....	2
1.1. The Right to Vote .....	2
1.2. The Indirect Election System of Sub National Councils.....	3
1.3. Proportional Representation, Party Candidate Lists, and Lack of Independent Candidates.....	4
2. Freedoms and Democratic Space .....	5
2.1. Freedom of Expression and the National Assembly .....	5
2.2. Functioning of the National Assembly .....	9
2.3. Freedom of Civic Associations and Their Activities .....	10
2.4. Freedom of the Press and Media Access and Content .....	11
3. Legal Reform.....	13
3.1. Priority Laws and Policies Adopted .....	13
3.1.1. Criminal Code .....	13
3.1.2. Law on Demonstrations .....	14
3.1.3. Law on Expropriation .....	14
3.2. Required Laws Yet to Be Adopted .....	15
3.2.1. Draft Law on Anti- Corruption .....	15
3.2.2. The Statute of Judges and Prosecutors and the Organization of the Judiciary .....	16
4. Policy Banning Civil Servants' Salary Supplements .....	17
CONCLUSION.....	18
Methodology.....	20

## **2009 Report on Cambodian Democracy, Elections and Reform from the Committee for Free and Fair Elections in Cambodia (COMFREL)**

In this document COMFREL reviews the current situation in Cambodia as related to democracy and elections, core freedoms, good governance, legal and judiciary reform, and describes a series of actions taken by the government and ruling party which have significantly undermined the proper functioning of democracy and its prerequisites. COMFREL calls on the Royal Cambodian Government (RGC) to reverse course to ensure that the rights of all Cambodians are respected, and that the systemic factors affecting the realization of a functioning democratic system are in place. COMFREL seeks to highlight the failures of the Cambodian government with respect to democracy and fundamental freedoms in order to chart a course for improvement in the upcoming years.

Cambodia is a constitutional monarchy with a liberal democracy and a multi-party political system. Elections are held at the national and commune (local) level every five years. The constitution is the highest law in the country and guarantees the Cambodian people the right to vote and to stand as candidates for election according to articles 34 and 51. Other political and social rights are also guaranteed by the Cambodian Constitution. In addition, Cambodia has signed and ratified several human rights treaties, including the International Covenant on Civil and Political Rights, by which the Cambodian government is required by international law to respect the rights described therein.

COMFREL calls on the Royal Government of Cambodia to enact key reforms in the electoral system and protect the democratic environment, so that the rights to participation of the Cambodian citizenry can be fully realized. In addition, COMFREL reminds the RGC of its existing obligations both under the Cambodian Constitution and international rights treaties, and urges the government to respect the rights of the Cambodian people. COMFREL urges the government to roll back clauses in recent Cambodian laws which further limit and constrict the rights of Cambodian people to freedom of speech, association, and press/ publication. At the same time, COMFREL requests the major donors and the international community to support and persuade the Cambodian government to undertake these reforms and promote democracy in Cambodia.

## 1. Election Reform

In 2009 major election stakeholders, many political parties, and civil society organizations reached a consensus on recommendations for election reform focusing on Voter Registration and Complaint Solution/Adjudication. However, so far the National Electoral Committee (NEC), the ruling party and the government have shown no serious will to respond to calls for election reform related to restructuring of NEC, political and campaign finance, access to media and the procedures of the electoral system. COMFREL suggests the government and major political parties make a serious effort to resolve issues of concern and reform in particular the procedures for Voter Registration and Complaint Solution/Adjudication.

### 1.1. The Right to Vote

Results from 2008 Voter List Audit and Voter Registration Survey Report conducted by COMFREL- in July 2009 revealed that during the 2008 National Assembly election approximately 440,000 eligible voters who went to cast their vote on polling day could not vote because they could not find their name on the voter list or could not find their polling station code (indicating the polling station location) or its location.

According to the 2008 voter list audit, major data inaccuracies consisted of date of birth (13.8%) and name (7.2%). 18.10% of respondents faced a difficulty with inaccuracy in at least one piece of data (year of birth, name or gender). 18.5% (16.3% cast a ballot in 2007 and/or 2008 and 2.2% are new voters) have seen all data, including their name, disappear from the 2008 official voters list. The reasons for this are: 1) voters did not update their residency after moving, resulting in inaccurate address and/or lack of data on the 2008 voter list; 2) voters did not come to verify their data on the list; 3) the NEC and its computer database operations and administration have insufficient quality control; 4) commune clerks complete forms incorrectly and send them to the NEC; 5) there is confusion between the commune councils (the councils are only subject to guidelines or instructions from the Mol) and the NEC with regard to electoral work allocation. COMFREL concluded that ineffective voter registration and voter list maintenance were a major obstacle to eligible voters exercising their franchise and that the individual's loss of voting rights was a direct result of irregularities in the voter list.

Declining public participation in the elections is also a cause for concern. Voter turnout for the direct National Assembly elections has declined markedly from 93.74% in 1998 to 75.08% in 2008. The direct Commune Council election, which was first conducted in 2002, saw a similar decline from 87.55% in 2002 to 67.87% in 2007.

Cambodian people face difficulties exercising their right both to vote and to choose their representatives. This is in violation of the International Convention on Civil and Political Rights (ICCPR) article 25 which states that "*Every citizen shall have the right and the opportunity... (a) To take part in the conduct of public affairs, directly or through freely chosen representatives. (b) To vote and to be elected at genuine periodic election which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*"<sup>1</sup>

---

<sup>1</sup> See the text of the ICCPR at the website of the Office of the UN High Commission on Human Rights: <http://www2.ohchr.org/english/law/ccpr.htm>

## **2. The Indirect Election System of Sub National Councils**

Originally, during the UNTAC period and the 1998 elections, Cambodia only held elections for the National Assembly, by which the Prime Minister was also selected. However, in 2002, Cambodia held its first direct commune council elections, leaving the provincial and district levels as the remaining levels of government not directly elected by the populace. Until recently provincial and district governments were still appointed by the ruling party/ government.

In 2009, the government changed this system by having district and provincial councils elected by the commune councils. Rather than holding a general election in which the Cambodian voters selected their representatives on these councils, the commune councilors selected by the public in 2007 (totaling 11,353 councilors) formed the electorate in these indirect elections.

However, the election system used for the sub-national councils is not democratic and does not reflect the principal of universal suffrage. Universal suffrage emphasizes inclusiveness and non-discrimination within the group of persons to whom the right to vote is granted. Under the current system, ordinary Cambodian citizens cannot choose their representatives at the sub-national council level and therefore do not enjoy universal suffrage. Through surveys and forums, COMFREL found that the public doesn't have confidence in this electoral system, and citizens have asked for a system of direct elections to select the provincial, municipal, district and khan levels of government.

Additionally, the sub- national election system does not reflect the objective of democratic development, which is a stated goal in the Decentralization and De-concentration (D&D) reforms of the Cambodian government. With no choice offered to the ordinary voter, this system cannot strengthen the accountability of elected officials towards their constituencies.

The proportional system used stipulates that the political parties prepare their candidate list and eligible voters are drawn from existing commune councilors (for Senate elections 123 votes are added which are cast by members of the National Assembly, in addition to the commune council votes). This system enables commune councilors to elect candidates from the party with which they are affiliated. Commune councilors had to elect their political party's candidate rather than the candidate of the people's choice in both the 2006 Senate elections and the 2009 sub national council elections. Hence, the number of seats is proportional to the current number of commune councilors of the major parties from the Cambodian People's Party (CPP), (7,993 commune councilors), the Sam Rainsy Party (SRP) (2,660 commune councilors), the Norodom Ranariddh Party (NRP) (425 commune councilors) and FUNCINPEC (274 commune councilors)<sup>2</sup> and the results can be easily forecast for the Senate or sub-national council elections. In the 2009 indirect elections of the sub national council, the results show the CPP winning 2,551 seats, the SRP winning 579 seats, the NRP winning 44 seats, and FUNCINPEC winning 61 seats.

This kind of indirect election system, in which the voters consist of elected members from the major political parties, results in the National Assembly and commune council majority party having a disproportionate amount of control over all indirect elections.

---

<sup>2</sup> The main parties' councilors total 11,352 plus one seat for the Hang Dara Democratic Movement Party

COMFREL keeps its recommendation that the government should change the system of election of the new provincial/ municipal and district/ khan councils so that the Cambodian citizenry directly elects these councils, rather than being elected by existing commune councils.

### **1.3. Proportional Representation, Party Candidate Lists, and Lack of Independent Candidates**

Most political parties in Cambodia have no clear democratic procedures for the selection of candidates for their party list. The party leadership has control of the content of the party list, making candidates on the party list more loyal to the party leadership than to their own constituents. Furthermore, the party has the power to remove the candidate from their position even when they already hold an elected seat.

During the 3<sup>rd</sup> mandate of the National Assembly (2003-2008) at least 13 members of National Assembly were removed from their position because they held viewpoints in conflict with their political party on policy issues. This resulted in their resigning from the party and the subsequent loss of their National Assembly seat. There were also similar instances at the commune council level according to COMFREL's parliamentary watch.

The resulting combination of the proportional representation system and the process for selecting candidates on the party lists has rendered the National Assembly a mere appendage of the executive branch, since the leadership of the ruling party has control over the members of the NA who are in the ruling party. In reality, the NA approves legislation coming from the executive branch with little debate or challenge, since the MPs' positions depend on their support of the ruling party leadership. This is one of the main reasons why the NA is failing to act as a check and balance against the executive branch of government, as it should under the principle of separation of powers.

In addition, currently citizens are also unable to stand for elections as candidates independent from a political party. From COMFREL's experience and comments from citizens, it would especially be desirable to allow independent candidates in the commune level elections. Many citizens who are active at the commune level, and who are involved in issues such as fisheries, agriculture or the environment, may be interested in public service, but do not wish to be aligned with a particular party. Local people have reported to COMFREL's local watchdog on commune council performance that they wish that local officials were more neutral, and less partisan. The current system of party based candidate lists for the commune level elections, as in the NA, makes commune councilors beholden to their party leaders more than to their constituents. Even some commune councilors reported some disillusionment, as they felt they do not have enough power in relation to the party structure to intervene in resolving local problems.

COMFREL concludes that the proportional system along with indirect elections in Cambodia does not ensure the independence of the elected official. The right of Cambodian citizens to choose their representative is not represented in the Senate and Sub-National Council elections.

COMFREL re-appeals to the government to reform the electoral system, implementing a mixed system which allows independent candidates and/or individual candidates as well as political parties (using party lists) to run for posts at all levels of government.

COMFREL appeals to the political parties to establish internally democratic procedures for the selection of candidates for the party candidate lists, so that candidates reflect the choice of the party membership rather than the party leadership.

## **2. Freedoms and Democratic Space**

The government has become increasingly intolerant of the exercise of freedom of expression in criticizing corruption, impunity, land grabbing and forced evictions. Threats have been made against human rights defenders and the opposition, and the government has created bans or restrictions on the freedom of peaceful assembly and freedom of expression in public areas which are now narrower than before. For instance, the government in practice has refused to grant permission for peaceful demonstrations by civil society or factory workers demanding that labor laws be respected.

Although parliamentarians have special immunity from prosecution, they too have found their freedom of expression restricted. The government has used the courts, criminal law and amendments to the internal rules of parliament to render representatives of the people fearful to debate and make laws, which has undermined the democratic function of the National Assembly and balance of power between the National Assembly and executive branch of government (i.e. the Prime Minister). Indeed, COMFREL's parliamentary watch found out that the number of parliamentarians speaking in parliament has decreased in comparison with the previous mandate of the National Assembly.

### **2.1. Freedom of Expression and the National Assembly**

In September 2008, when the new parliament was sworn in, the CPP used its overwhelming dominance to force through the adoption of new internal rules for parliament. According to Articles 48 and 55 of these rules, MPs must be seated and arranged in groups, each of which must be composed of at least ten members with a leader and a deputy-leader. MPs from parties with less than ten seats must join a group with other MPs. An MP cannot speak in parliament unless he or she is a member of a group, makes a request to speak through the group leader, and gets permission from the National Assembly's Chairman. These rules have prevented the three Human Rights Party (HRP) MPs from speaking in parliament, as they have not joined a group because they want to retain their independence from other parties.

In addition, a new law/statute was introduced to silence the voice of parliamentarians. It is similar to the U.N. Transitional Authority for Cambodia Law of 1992, which was used in the past to detain government critics on charges of criminal defamation. The newly adopted Statute of Parliamentarians contradicts the Constitution, which states that no assembly member shall be prosecuted, detained or arrested because of opinions expressed while exercising his or her duties. Article 5 of the new law, however, takes away that protection if a parliamentarian is found to be abusing an individual's dignity, social customs, public order or national security – without clarifying what constitutes these acts. When parliamentarians fear arrest, they are limited in the exercise of their duty to express opinions and advocate for their constituents' interest.

The problem has been compounded by the government's use of various ill-defined laws and the judiciary it controls as a political tool to silence critics. Government officials have filed recent lawsuits against political activists including members of the Sam Rainsy Party, Mu Sochua and Ho Vann, and other prominent journalists and individuals. These activists had raised their voices and concerns against the mismanagement of public services, with the constructive aim of remedying the situation. Sam Rainsy, the leader of the opposition Sam Rainsy Party (SRP), and member of National Assembly Ho Vann went into self-imposed exile citing fear of arrest after the National Assembly voted to remove their parliamentary immunity.

COMFREL has conducted a legal analysis of the three cases in which the immunity of the three MPs was removed. In at least two of those cases, the analysis revealed that there is little legal justification for the charges brought against the MPs. Judges have ruled most of these cases in favor of the government officials without following independent court procedures- in particular in the cases of Mu Sochua and Sam Rainsy. Human Rights Watch (HRW) and the United Nations Office of the High Commissioner for Human Rights in Cambodia (OHCHR) said that the trials did not meet international standards for a fair trial.

#### **H. E. Mu Sochua Charged with Defamation<sup>3</sup>**

In April 2009 Hun Sen made a speech in Kampot, in which he referred to a strong woman [without name] who embraced a General and then complained that her shirt had come unbuttoned.<sup>4</sup> He also used the term "a strong legged woman" to refer to this woman, which is an insult in Cambodia. As a result of this, in April, 2009 Sochua announced that she would sue Prime Minister Hun Sen for allegedly using derogatory and defamatory language against her. In response, Hun Sen made a counter charge of defamation against Sochua, stating that he was a victim because he was not referring to Mu Sochua. Subsequently, Mu Sochua's parliamentary immunity was removed in a vote by the NA. It appears that Mu made no remarks that could be construed as defamatory- she only accused Hun Sen of defamation. However, the court rejected her case while a counter case filed against her by Hun Sen was allowed and is still proceeding.

Through its observation, COMFREL has determined that through the current system, the NA is a heavily partisan body and cannot ensure the fair decision on lifting immunity. Hun Sen made the following comment in a speech: "I don't believe that the members of parliament will raise their hands to lift my immunity...To lift Mu Sochua's parliamentary immunity will be as easy as peeling a boiled banana because [the CPP] has enough votes to do that [i.e. they have more than 2/3 of the votes in the NA]".<sup>5</sup> What his quote illustrates again is that the NA vote to remove her parliamentary immunity was not based on the substance or validity of the charges against her, but on orders from the Prime Minister and/or the party leadership.

---

<sup>3</sup> Cambodia office of the High Commission for Human Rights, available at: [http://www.un.org.kh/index.php?option=com\\_content&view=article&id=161:the-use-and-abuse-of-defamation-and-disinformation-lawsuits&catid=44:un-speeches-and-statements&Itemid=77](http://www.un.org.kh/index.php?option=com_content&view=article&id=161:the-use-and-abuse-of-defamation-and-disinformation-lawsuits&catid=44:un-speeches-and-statements&Itemid=77)

<sup>4</sup> In Kampot there was an incident from the 2008 election, in which Mu Sochua had seen an government vehicle being used for campaign purposes. When she tried to take a photo of the vehicle, she was physically restrained by a high rank soldier.

<sup>5</sup> Radio Free Asia website, 29 April, 2009.



In addition to the charges against Mu Sochua, the government also filed defamation charges against her lawyer, Kong Sam Onn, and he was threatened with disbarment from the Cambodian Bar Association. As a result, Kong Sam Onn ceased his representation of the MP, leaving Mu Sochua with no lawyer in her case.<sup>6</sup>

At the time of publication of this report, MP Mu Sochua had been sentenced to pay fines due to her alleged defamation of the Prime Minister.

According to COMFREL's analysis of this case, there appears to be no substance to the charges of defamation made against each other among political personalities Mrs. Mu Sochua or the Prime Minister Hun Sen. COMFREL did not find any comment, quotation, or evidence made by Mu Sochua or Hun Sen which could be construed as defamatory.

In addition the Cambodian Constitution protects the MPs from prosecution for opinions expressed in the course of exercising their duties.<sup>7</sup> Thus the removal of Mu's immunity was essentially unconstitutional.

#### **H. E. Ho Vann Charged with Defamation**

Ho Vann is another Sam Rainsy Party MP who made a comment to the Cambodia Daily about academic degrees which 22 RCAF generals received from a military institution in Vietnam. Ho Vann commented that he didn't think the degrees conferred had any value, and his comment was published in the Daily. Subsequently, the 22 generals sued him for defamation and incitement, and his parliamentary immunity was also removed.

According to COMFREL's analysis, there is no basis for a criminal defamation suit against Ho Vann. In most countries, his speech would be protected as "fair comment". Further, the Cambodian Constitution protects the MPs from prosecution for opinions expressed in the course of exercising their duties.<sup>8</sup> Thus the removal of Ho Vann's immunity was essentially unconstitutional.

Eventually, the charges against Ho Vann were dropped, while the charges filed at the same time against the Cambodia Daily are still proceeding. Though charges against Ho Vann have been dropped, his parliamentary immunity has not yet been restored.

#### **H. E. Sam Rainsy Charged with Destruction of Property and Racial Incitement**

Sam Rainsy is an MP and the leader of the largest opposition party in Cambodia. Sam Rainsy was charged in two cases in 2009. His immunity as a member of parliament was lifted in February after a district governor filed a criminal defamation complaint against him for accusing CPP leaders of corruption during the 2008 election campaign. Rainsy's immunity was restored after his party paid a US\$2,500 fine.

Sam Rainsy's parliamentary immunity was lifted again in November and the court issued an arrest warrant after he pulled out six border post stakes along the Cambodia-Vietnam

---

<sup>6</sup> Human Rights Watch, 14 July, 2009, available at <http://www.hrw.org/en/news/2009/07/14/cambodia-end-assault-opposition-critics>

<sup>7</sup> See Article 80 of the Cambodian Constitution at <http://www.embassy.org/cambodia/government/constitution.htm>

<sup>8</sup> See Article 80 of the Cambodian Constitution at <http://www.embassy.org/cambodia/government/constitution.htm>

border on 25 October, and he failed to appear before a judge<sup>9</sup>. Rainsy took the measure of removing the border stakes after local farmers complained that the new border demarcation encroached on their farmland. The government had proceeded with the demarcation of the border with little public involvement and oversight, and suppression of dissenting voices commenting on the process.<sup>10</sup> Rainsy now claims to have proof that the border posts extended several hundred meters into Cambodian territory and thus wrongfully deprived those farmers of their land.

The Cambodian courts charged Rainsy with destruction of public property and racial incitement. On 27 January, 2010, Rainsy was tried in absentia, convicted on both charges and sentenced to two years in prison. The court proceedings were heavily guarded by police and were closed to journalists, human rights activists, members of the public, and even the family members of two other villagers who were tried at the same time. The court also refused to consider evidence which the defense lawyers for the two villagers wanted to introduce.<sup>11</sup>

The overall result of the trial is convenient for the ruling CPP since it forces Sam Rainsy to stay out of the country or face two years in jail. As a result of this the main opposition party will be at a real disadvantage since their party leader will be out of the country. At least one of the two charges- of racial incitement- seems to have no basis in fact at all. While Rainsy did actually remove the temporary border posts, there does seem to be evidence that the markers were improperly placed, and thus not actually demarcating the real border. The sentence of two years imprisonment is unduly harsh, appears to be politically motivated and was imposed without a fair trial. The court's verdict in this case further undermines democratic pluralism in Cambodia's democratic institutions. It further limits an open, democratic process of public debate on public issues such as border issues, in addition to making Cambodia's political environment even more unfair for non-ruling parties.

As a result of these three cases, opposition MPs spent a total of 6 months abroad in 2009 to avoid criminal prosecution. This temporary exile is a major impediment to them conducting their role as an MP effectively.

These are not isolated cases. In the past few years, removal of parliamentary immunity has repeatedly been used against opposition parties to silence dissent and hamper the activities of these parties. It is virtually impossible for the opposition parties to compete

---

<sup>9</sup> Sam Rainsy's parliamentary immunity was lifted on 16 November after he pulled out six border post stakes along the Cambodia-Vietnam border. The lifting of Sam Rainsy's immunity was conducted so that he could face the charges leveled by the court. Sam Rainsy uprooted these border stakes after listening to local villagers who claimed that these stakes were planted in encroachment of their rice fields. At the same time, the Svay Rieng provincial court announced the charges against Sam Rainsy: destruction of public property and incitement of racial discrimination. The uprooting of the stakes took place on the same day the SRP organized a kathen procession to the Wat Ang Romdenh pagoda, located in Samrong commune, Chantrea district, Svay Rieng province. During the ceremony, two pagoda laymen belonging to the pagoda committee received a donation from the SRP kathen ceremony even though they were allegedly threatened [by the authority] ordering them not to accept the donation.

<sup>10</sup> Mam Sonando and Rong Chhun were both arrested in freedom of expression cases related to discussion of the border treaty. Six other individuals faced charges related to comments on the border treaty, but avoided arrest by fleeing overseas. See "Cambodia: Attacks on Freedom of Expression and Political Rights", Cambodian League for the Promotion and Defence of Human Rights; January, 2006.

<sup>11</sup> Human Rights Watch, 28 Jan., 2010, available at <http://www.hrw.org/en/news/2010/01/28/cambodia-opposition-leader-sam-rainsy-s-trial-farce>

on a level democratic playing field, and perform their duties properly, when they are subject to this harassment and some MPs spent time overseas out of fear of arrest.

At least 10 government critics<sup>12</sup> and 235 human rights defenders (mostly land rights defenders from local communities) were prosecuted or charged with offences for criminal defamation, incitement and disinformation based on complaints by government, military officials, and local authorities during 2009, according to the Cambodian Human Rights and Development Association (ADHOC) report on human rights in 2009.

COMFREL appeals to the government to cease making charges against opposition MPs, journalists, human rights defenders and villagers on grounds of defamation and other charges in order to ensure that they are able to freely criticize and challenge the government and ruling party, as is their right and duty.

## **2.2. Functioning of the National Assembly**

The Cambodian government was intended to function as a liberal democracy in which the three branches of government- executive, judicial, and legislative- act as a limit or check on the power of the other branches. However, in practice, the NA and judicial branches have failed to exercise much limitation on the power of the Prime Minister or his administration. This results from the control over MPs by their political party, various strategies to obstruct the opposition parties in the NA, limitations on debate in the NA, and the large majority controlled by the ruling party during the current mandate. Thus the current role of the NA as a balance against the executive is fairly limited.

Debate in the National Assembly is currently limited by two factors- a boycott of NA committees by the opposition, and limitations imposed on debate at the plenary sessions by the government/ ruling party.

Previously, from 1993 until 2008, the Cambodian political parties had the practice of sharing power and leadership in the NA committees. However, starting in the fourth mandate of the NA, the ruling CPP insisted that it should have the leadership (chairperson) of all of the committees in the NA. As a result of this, the main opposition party SRP decided to boycott all committee work. At the same time, the ruling party often significantly curtails debate of draft laws at the NA plenary sessions, claiming that they have already been discussed at the committee level. The ruling CPP has enough MPs to pass any law so the opposition has no means to force changes to the laws or further debate. As a result, the function of the NA as a forum for the discussion of draft laws has been limited, and the RGC is able to pass almost any law through the NA as it sees fit.

The National Assembly, as already mentioned, struggles to act as a check on the power of the executive branch because of the control exercised over MPs by their party. COMFREL's parliamentary watch reveals that two MPs resigned from the CPP in 2009, but the reason for their resignation is not clear. Therefore it is not currently possible to conclude that this was due to a disagreement on policy, or in order to discipline those MPs.

---

<sup>12</sup> Statements from Human Rights Watch, January 29, 2009

In addition, in some cases the RGC requests that certain laws be passed quickly and without significant debate. This request is usually conveyed to the NA by the committee chair when introducing the bill. On the other hand, MPs only sent requests to the government to answer questions on three occasions in 2009. On two of those occasions, the government complied with the request and sent representatives to appear in the NA. In the third case, a request by SRP MP Son Chhay for more detail on the government budget, the Minister of Finance only answered by letter saying that the information requested was available on the government's website.

In several instances, the amount of debate in the NA concerning draft laws is rather limited, especially considering the importance of the laws in question. For example, the government's law on expropriation of private citizen's land was only debated for a total of six hours. The Law on Demonstrations, which contains several clauses seriously restricting the right to freedom of speech, was only debated for a total of seven hours. The Penal Code, for which the Cambodian public has waited for years, was only debated for just over 13 hours, despite its contentious clauses related to defamation.

In terms of gender, women fared well as speakers in the NA, with 11 out of 26 female MPs speaking during NA sessions (42%). This compares favorably to male MPs, of whom 34 out of 97 spoke during NA sessions (35%). Nevertheless, female MPs still only make up 21% of the total number of MPs, short of the goal of 30% female MPs, and far short of gender parity.

In order to improve the function of the National Assembly, COMFREL suggests reform of the internal rules and statutes of parliament to allow all parties to speak during the NA's sessions and to remove clauses which enable prosecution of MPs for expressing opinions in the conduct of their duty as MPs.

### **2.3. Freedom of Civic Associations and Their Activities**

The general attitude of the government towards the work of NGOs and human rights defenders is not particularly favorable when they are critical of the human rights situation in the country.

Recently, the government has shown more hostility to NGOs and human rights defenders. When reconfirmed in office after the July 2008 elections, Prime Minister Hun Sen prioritized the law on NGOs as one of the first three laws his government set out to enact, the other laws being the penal code and anti-corruption law. The government has made frequent promises to enact all three pieces of legislation. The government has argued that the NGO law is needed to prevent the funding of NGOs by terrorist organizations. But what has been forgotten is that the Anti-Terrorism Law of 2007 (Chapter 11 on funding and aid for terrorism) has already adequately addressed this issue. Both the Cooperation Committee for Cambodia (CCC) and the NGO Forum on Cambodia have expressed their opposition to the NGO law, as they perceive that it could lead to a loss of independence for NGOs.

In March 2009, in response to a critical assessment of the human rights situation, Hun Sen accused NGOs of giving "misleading information" in the report and lashed out at them saying that, "human rights NGOs are working only for salaries; if they didn't criticize the government, they would be out of work."

Under pressure from powerful persons interested in the exploitation of the resources that are supposed to belong to the indigenous people in the area, according to the country's land law, a judge recommended that ADHOC remove a member of its staff from Rattanakiri province. That staffmember, Pen Bonnar, is a human rights defender well known for his defense of the rights of the indigenous people against encroachment on their local land and forests by the rich and powerful. That judge intimated that if Pen Bonnar was no longer under his jurisdiction he would not have to conduct the investigation into the charges of defamation, disinformation and incitement made against him. ADHOC obliged and assigned Pen Bonnar to work in Phnom Penh.

#### **2.4. Freedom of the Press and Media Access and Content**

The Club of Cambodian Journalists (CCJ) reported that in 2009, the number of lawsuits against journalists increased by eight cases in comparison to 2008. The number of journalists arrested also increased in 2009. At the CCJ's meeting on 26 December 2009, the CCJ noted that this year, there were 10 lawsuits filed against journalists, i.e. 8 more cases than 2008 where only two lawsuits against journalists took place. Also according to the CCJ, in 2009, 31 journalists were arrested, i.e. double the 2008 number where only 14 journalists were arrested by the authorities. In these 31 arrests, two of the journalists were charged with defamation and disinformation.

Access to the media for major political parties, and an impartial presentation of events in the country, is an important part of the functioning of the democratic system in which voters make decisions based on information about the performance of the parties, as well as the overall situation in the country.

In 2009 and continuing from previous years, the media in Cambodia, including print, radio and TV media, continued to be structured in ways that place opposition parties at a severe disadvantage and limit the information and perspectives available to Cambodian citizens. In addition, last year the courts were used effectively by high ranking officials from the CPP Government to sue journalists and newspapers.

In the print media, which had previously been one of the most open parts of media coverage in Cambodia, some Khmer language papers supporting the opposition parties have discontinued operation or were forced to close. Defamation and disinformation lawsuits have been an effective tool for CPP and government high ranking officials to use against journalists, especially from opposition newspapers. For example, Moneaksekar Khmer's publisher Dam Sith, the long running paper sympathetic to the opposition Sam Rainsy Party, was sued in court by the RGC. To avoid the charge, Dam Sith wrote an apology letter to the RGC's Prime Minister Hun Sen and agreed to shut down the newspaper. As a result, this opposition affiliated newspaper which had been in operation for more than 10 years was closed in 2009.

Another pro-opposition newspaper's editor in chief, Mr. Hang Chakra, was also sentenced to a one year prison term and a fine of nine million Riel. He was sued by the RGC on "disinformation and incitement" after he alleged that there had been corruption in office of Deputy Prime Minister Sok An. In addition, a defamation lawsuit filed against the English language Cambodia Daily due to its printing the opinion of SRP MP Ho Vann continues to be fought in the courts.

The result of these legal attacks on newspapers is that there has been a decrease in the number of newspapers which are critical of the government, while those remaining have been forced to soften their tone. On the other hand, newspapers which are sympathetic to the government and the ruling party, such as the three main nationwide-circulation dailies *Kampuchea Thmei*, *Koh Santepheap* and *Rasmei Kampuchea*, have grown in influence and impact. Articles in these papers are cited and picked up by television and radio stations that are sympathetic to the government and CPP.

Radio media is one of the most effective tools to reach people in Cambodia, most of whom live in rural areas with no TV coverage or even newspaper distribution. Despite this, radio access is very limited to the opposition parties, which can access only a few channels with limited coverage in the provinces. In Phnom Penh, the Sam Rainsy Party controls two radio stations, while there are two independent stations which may sell air time to the opposition<sup>13</sup>. FUNCINPEC controls two radio stations but it is currently part of the ruling government. In contrast, the CPP can access at least 39 channels<sup>14</sup> including private and state channels reaching across the country. In 2009, the Ministry of Information announced that it will not sell any more radio licenses, meaning that the opposition parties will have great difficulty getting access to more radio channels than they can access now.

The media of television is overwhelmingly dominated by the ruling party or its allies in the business community. The opposition parties cannot access TV coverage, except possibly in a single TV show- TVK's UNDP-funded "Equity Weekly" program, in which opposition members of parliament are sometimes interviewed related to debates on draft laws in the National Assembly. COMFREL's monitoring of this program from April to December 2009 showed that the SRP and its MPs are shown more than other political parties- with 48 appearances. The CPP and its MPs were covered in 16 appearances, the Human Rights Party and its MPs were shown in 18 appearances, FUNCINPEC and the Nationalist Party (formerly Norodom Rannariddh Party) combined were shown in 12 appearances.<sup>15</sup>

All TV stations are either owned by the government itself, by a hybrid of government and private, by members of the ruling CPP, or by tycoon allies or family members of the government and CPP (such as Prime Minister Hun Sen's family and daughter, who has a major share of the ownership of TV Bayon, 95 FM Bayon<sup>16</sup> and the newspaper *Kampuchea Thmei*). As a result, the news broadcasts on Cambodian TV are devoid of much of the real newsworthy content which occurs on a daily basis. Cambodian TV news regularly covers dry conferences which show government officials speaking at meetings, whereas the recurrent land conflicts, for example, find no place on the news at all. The TV media also promotes the ruling party by showing them distributing gifts to the poor or to the soldiers at Preah Vihear temple. The Prime Minister's speeches are often broadcast at great length, absorbing vast amounts of media air time, and reinforcing his domination of the country's political landscape. TV channels CTN and Bayon in particular, have also been used by the CPP to discredit and criticize the

---

<sup>13</sup> "Restrictions on the Freedom of Expression In Cambodia's Media", Cambodian League for the Promotion and Defense of Human Rights, May, 2009.

<sup>14</sup> Hun Sen speech at the opening ceremony of Latex Harvesting and Inauguration of the Dharma School of Kirivanaram Pagoda at Kampong Cham province on 21 May 2008.

<sup>15</sup> This information is derived from COMFREL's media monitoring of TVK.

<sup>16</sup> LICADHO report on restriction on the freedom of expression in Cambodia, May 2009

opposition parties and civil society organizations/NGOs on talk shows, in which the opposition parties or NGOs have no chance to reply to criticism.

### 3. Legal Reform

In the 4<sup>th</sup> term the government's political platform has set 48 points for reform including 4 of 8 prioritized laws<sup>17</sup> with the goal, among others, of strengthening the professional court system with effective and qualified judicial services in Cambodia. In addition to these prioritized laws, the government also aims to create and pass the law on legal appointments, the statute on judges and prosecutors, an amendment law on organization and development of Supreme Council of Magistracy, (which is the most powerful organ of the judicial system), and the anti-corruption law.

#### 3.1. Priority Laws and Policies Adopted

Since 2008 the National Assembly has adopted major laws including four prioritized laws such as the civil code, the civil procedure code, the criminal code, the criminal procedure code, demonstration laws, 2008/2009 national budget laws, and an expropriation law. COMFREL and other members of civil society have raised concerns and provided comments on draft laws before and during the National Assembly debates. COMFREL maintains its appeal to the government to review and remove all clauses in laws which restrict the right to freedom of speech and association, including in the new Criminal Code and Law on Demonstrations.

##### 3.1.1 Criminal Code

After escorting United Nations officials out of the National Assembly, Cambodia's ruling party pushed through a draft criminal code in October 2009.

Members of civil society think that provisions in the new criminal code create yet more barriers to freedom of speech in a country becoming infamous for silencing opposition members and journalists. The code includes the crime of defamation, and the vague terminology used creates ambiguity and the possibility of abuse of the law. For Cambodia's citizens and civil society, who have observed the use of the courts and criminal charges to silence critics, the use of vague terminology is threatening because it allows the courts to convict people based more on the court's whim than on legal principles.

Under the new criminal code, *media* defamation cannot be considered a criminal offense and will instead be covered by Cambodia's press law. Anyone other than journalists may face charges for public defamation, with fines of between \$25 and \$2,500, with the code describing public defamation as "all exaggerated declarations, or those that intentionally put the blame for any actions, which affect the dignity or reputation of a person or an institution." Individual interpretation by judges or other legal officials of these words could well lead to further curtailing of critics' remarks, since vague phrases such as "affect the dignity or reputation" can be interpreted at will according to the situation.

---

<sup>17</sup> The National Assembly already adopted four prioritized laws such as the civil code, the civil procedure code, the criminal code, and the criminal procedure code

*Thus, there is still continued criminalization of defamation* since the offence remains in the Penal Code. In addition, the vague and ambiguous terminology in the Penal Code creates a lack of clarity in the law, leaving it open to judicial interpretation and potential abuse. In the interest of allowing democratic debate, COMFREL urges the government to change these clauses in the law. For instance, prosecutions due to alleged offences concerning publication of commentaries relating to court proceedings should be restricted to statements intended and likely to undermine the administration of justice. The current provisions in this regard create serious concerns for the exercise of freedom of expression. In another example, crimes concerning national security should include a public interest override, criminalizing only those acts carried out with the intention of undermining national security.

### **3.1.2 Law on Demonstrations**

According to the government's statements, a new law on demonstrations was needed to improve freedom of demonstration vis a vis the old law. The draft law on demonstrations was adopted by the National Assembly in October 2009. However, the content of the law raises major concerns about limitations on freedom of assembly in the new law. Although articles assigning liability to leaders of the demonstration for any damage or inappropriate behavior by demonstrators were removed, other problematic features remain, including clauses which a) limit the number of demonstrators to no more than 200; b) require demonstrators to use an officially identified place for demonstrations in each province; c) limit the time for conducting demonstration to working hours only (from 6am-6pm); d) require demonstrators to obtain permission from provincial authorities whose offices are often far away from local residents.

### **3.1.3 Law on Expropriation**

At the end of December 2009, the NA quickly adopted this law although representatives of civil society are of the view that the law contains many areas of concern which will affect a large number of people and their livelihoods. It will potentially negatively affect the interests of property owners, rights bearers and many other poor communities due to the fact that the law allows the public authorities to expropriate land and forcefully evict residents, without adequate measures to ensure due process or provide fair and just compensation in return.

There was very limited debate on the substance and spirit of the law which civil society, community representatives and other concerned parties appealed to all members of the National Assembly to consider. In order to minimize potential negative impacts of expropriation procedures, the RGC needs to create sub-decrees or guidelines which improve the legal protections offered to individuals affected by such operations. For instance, the following recommendations on specific articles of the law were raised:

*Article 2:* given delays in the land titling process throughout Cambodia, the law on expropriation should *govern both the owners with land titles and those with legitimate possession rights* affected by expropriation of their immovable property in situations of national and public interest;

*Article 4:* in light of the uniquely vulnerable position of indigenous people in protecting their land rights, where an expropriation affects the collective land of indigenous people, this shall require prior registration before any expropriation is carried out on that land;



*Article 5:* the definition of “*public physical infrastructure*” shall be clarified, because it is too broad and can be subject to differing interpretations;

*Article 12:* the Expropriation Committee and sub-committee is the only body who shall be in charge of all execution of the expropriation; *any sub-decree which is formulated under this law shall be published in draft form to the public so that they have an appropriate opportunity to conduct consultation.*

### **3.2. Required Laws Yet to Be Adopted**

COMFREL appeals to the government and National Assembly to release the draft laws, especially the Anti-Corruption Law, to the public, allow enough time for comment from citizens and civil society, and schedule extensive debate on those draft laws in the National Assembly.

#### **3.2.1 Draft Law on Anti- Corruption**

The draft of an anti-corruption law has not yet been publicly released, though this draft law was endorsed by the Council of Ministers in 11 December 2009.

The government has leaked only one part of the draft which became widely known. This single feature of the new law against corruption was either welcomed or mocked, as the law will treat staff of NGOs as “civil servants”, and thus require this staff (who usually earn very little) to declare their property and assets. “One of the only details of the anti-corruption law that has been made public on Friday is the fact that the staff of NGOs are required to disclose their personal assets. Under the law, NGO workers are defined as public servants, and side-by-side with officials who are paid by the government, they must disclose their assets. ‘It is an obligation to do so, if you don’t do it, you are jailed,’ Mr. Siphon [spokesman of the Council of Ministers] explained the day before yesterday, adding that the law will take effect 60 days after being passed by the National Assembly.”

The draft has allegedly been sent from the Council of Ministers to the National Assembly, but it is still being kept secret and there is conflicting information about the location of the draft law. “A secretary of state of the Ministry of Economy and Finance, who asked not to be named, said that the draft has already reached the secretary general of the National Assembly. However, the Council of Ministers spokesperson Phay Siphon reiterated the day before yesterday that the draft law cannot be made public, because it has yet to arrive at the National Assembly. Once it arrives there, it can then be released to the public.”<sup>18</sup>

Keeping the long-awaited draft law on anti-corruption out of the public eye is at odds with the spirit of a law which is meant to call for openness and transparency. An effective approach to fighting corruption must include transparency, openness, and access to information; in contrast to the actions of the government, which so far has shown little transparency in revealing the content of this crucial law.

---

<sup>18</sup> Cited from *The Cambodia Daily* and *Phnom Penh Post* articles published in December 2009

### **3.2.2 The Statute of Judges and Prosecutors and the Organization of the Judiciary**

So far the government still has not endorsed required laws on the statute of judges and prosecutors, and there is no legal underpinning to the organization of the judiciary, which has resulted in the judiciary not functioning effectively. This crucial institution is fundamental to the actualization of human rights, yet it remains ineffective, and lacks independence and capacity to function. In any discussion on human rights in Cambodia, it is imperative for these issues to take center-stage. Without an effective, legally established and independent judiciary, human rights violations have no effective deterrent and impunity is guaranteed.

The Cambodian Constitution has specifically stipulated that a number of laws need to be enacted, namely, the law on the statute of judges and prosecutors and also the law on the organization of the judiciary (Article 135 of the Constitution). However, since the creation of the Constitution, these two important laws have not seen the light of day. As a result, Cambodians are not in practice entitled to be tried by an independent, competent and impartial tribunal established by law, as mandated by Art.14-1 of the International Covenant on Civil and Political Rights, to which Cambodia is a state party.

In a statement dated 7 August 2009,<sup>19</sup> the Asian Human Rights Commission (AHRC) pointed out the Cambodian government has delayed the enactment of these two important laws for more than 16 years as of September 24<sup>th</sup>, 2009; a delay that should by itself amount to an unconstitutional omission on the government's part, although the country's Constitution is silent on this omission.

This delay in enacting these two key laws for more than 16 years is one indicator of the executive's control over the judiciary. It is unconstitutional, but there is no procedure for constitutional review of acts of government by the country's Constitutional Council in the same way as the constitutional review of laws operates. This loophole should be removed and a mechanism for review of the government's actions established, lest Cambodia continues to be ruled by decree instead of the rule of law, and the government continues to exercise control over the judiciary.

With the absence of the law on the statute of judges and prosecutors, and also of the law on the organization of the judiciary, both of which have been specifically stipulated in the country's constitution, the whole of Cambodia's justice system lacks any legal foundation and framework. In particular, the prolonged absence of the law on the statute of judges and prosecutors calls into question the legitimacy of the Supreme Council of the Magistracy as well as of the Constitutional Council itself.

The statement of Asian Human Rights Commission (AHRC) also explained there has been some chaos within the Cambodian judiciary with the actual and planned retirement and appointments of many judges and prosecutors. The government has retired and replaced half of the members, two ex-officio and two appointed, of the Supreme Council of the Magistracy (SCM). A further 27 are also to be retired. In the meantime, some 32 judges and prosecutors, including four who are the de facto age of retirement of 60, have been appointed to new positions.

---

<sup>19</sup> See "CAMBODIA: Law on the statute of judges, not their retirement, is the right end from which to tackle judicial reform", available at <http://www.ahrchk.net/statements/mainfile.php/2009statements/2159/>

According to the country's Constitution, the nomination, including appointment, retirement and transfer, as well as the discipline of judges and prosecutors are the responsibility of the SCM, and not that of the government. The SCM is the supreme body of the judiciary which is chaired by the country's king and which also has the responsibility of ensuring judicial independence.

This practice contravenes Art. 134 of the country's Constitution which says, among other things, that "The Supreme Council of the Magistracy shall make proposals to the King on the appointment of judges and prosecutors to all courts." It should be declared unconstitutional when not following Art. 150 of the same Constitution, which states "Laws and decisions by the State institutions shall have to be in strict conformity with the Constitution."

COMFREL appeals again to the government to create and pass two laws mandated by the Cambodian Constitution- the law on the statute of judges and prosecutors and the law on the organization of the judiciary, while allowing enough time for public comment and appropriate debate in the NA. COMFREL also urges the government to take steps to ensure the credibility and independence of the Supreme Council of the Magistracy (SCM).

#### **4. Policy Banning Civil Servants' Salary Supplements**

Suddenly on December 3 2009, the Cambodian government also initiated a surprise new sub-decree banning income supplements (merit –based performance, or MBPI, priority mission group, or PMG, and other salary supplements) to civil servants working on development projects. Some NGOs and donors had provided salary supplements to key civil servants working in sectors those NGOs were actively involved in, such as the healthcare and education sectors. The government claims that the previous policy and program on salary supplements may not ensure equity in treatment, benefits and opportunities, which could lead to disharmony and division in the civil/public services. However, this claim is not based on any details drawn from an assessment, evaluation or study that has been provided to development partners.

The government's new policy is in direct contrast to its previous statements in 2009. According to the speeches of members of the government in February 2009<sup>20</sup>, the administrative reform cornerstone is meant to improve the delivery of public services to make them more accessible, efficient and transparent, and less bureaucratic. In the seminar, Prime Minister Hun Sen stated that in the fourth mandate, the RGC would continue to expand the implementation of priority mission group (PMG) and the merit – based performance (MBPI) and increase salary of 20% in each year (according to the government the average salary is now around US\$ 75.5).

The government's apparent commitment to the salary supplement policy in early 2009 made the announcement of the ban on supplements, which came without any justification in the form of a study, evaluation, or assessment, even more surprising.

---

<sup>20</sup> Speeches of Prime Minister, Hun Sen, Deputy Prime Minister Sok An and documents in the national seminar on dissemination of the strategy and policy on administration reform held in 17 February 2009 , see more [www.car.gov.kh](http://www.car.gov.kh)

While on December 3, 2009 the government said it is taking this step to eliminate disparities between some civil servants who receive the supplements and those who do not, members of the aid community, NGOs, and some civil servants have raised concerns. Particularly, they are concerned that a decline in salaries will lead civil servants to search for other additional work, and potentially increase petty corruption as civil servants seek to increase income by levying service fees on consumers. While the government claims that it is devising a new plan to increase civil servants' compensation, so far no details have been made public. Meanwhile, NGOs are warning that the new policy may affect the implementation of programs they had planned for 2010. Development partners have said that they have had limited opportunities to discuss with the government the impact of this decision on the inter-governmental agreements on joint RGC/Development Partner development programs and on the cooperation strategy for public administration reform.

This policy may have a significant impact on the quality of public services in Cambodia, and affect Cambodian citizens who seek those services. As this policy affects the quality of governance, COMFREL appeals to the government to carefully consider whether the ban on salary supplements is in the interests of the citizens it serves, and craft a policy in close consultation with development partners and NGOs.

## **CONCLUSION**

In conclusion, the Cambodian democratic system is currently suffering from a series of deficits which prevent it from fully functioning to represent the interests of the Cambodian people. A wide array of actions taken by the government or ruling party have caused a large number of voters to lose the right to vote, made it difficult for other parties to compete fairly, and decreased Cambodian citizen's access to information and divergent perspectives. The Cambodian government must reverse course in order to restore the proper functioning of the democratic system.

These are not merely empty arguments which refer to rules and principles which have no logic or reason behind them. Rather, according to ethical reasoning based on the concept of justice for citizens, the Cambodian government must implement elections and the justice system in a way that provides freedom to the Cambodian people to make their own choices about their government. The government is meant to serve the people, not to dominate them. While the Cambodian government and other state institutions are mandated to provide free and fair elections, and a credible justice system, in other areas, such as the freedom of media, freedom of expression and freedom of information the government is needed to respect and protect those rights. Until now, and assessing the pattern of actions by the Cambodian government, one would conclude that the government lacks willingness to provide justice and choice to its citizens- which implies that it is not wholly concerned about their welfare.

COMFREL calls on the Cambodian government to take steps to reform the Cambodian electoral system to make it more democratic. The Cambodian government should implement universal elections at the provincial/ municipal and district/ khan levels. In addition, the government should rehabilitate the function of the National Assembly by reforming the internal rules, allowing all parties to debate draft laws to the extent required, and ceasing political prosecutions of the opposition. Meanwhile, the

government should allow the judiciary to function independently and pass key legislation needed for that function. Media ownership should be diversified and made more politically neutral in order to represent diverse points of view to the public.

Thus, out of respect for, and in service to the Cambodian people, the government must invest considerable political will in order to ensure that these changes come to pass.

## **Methodology**

This report is mainly based on an analysis of events in Cambodia in the year 2009, and informed by COMFREL's extensive experience monitoring elections and the political arena in years past. This report is an update on previous documents calling for democratic reforms in Cambodia.

Many of the events described in the report are common knowledge in Cambodia, and as such were heavily covered in the local media in 2009. Other material used in the analysis was drawn from COMFREL field activities, which included data collection as part of Parliamentary Watch, monitoring of the fulfillment of the government's platform, and interaction with voters during COMFREL's local public forums. In addition, COMFREL conducted a survey on the voter registration/ audit of the voter list in 2009. Additional sources were drawn from newspapers such as the Cambodia Daily, the Phnom Penh Post, and reports from other Cambodian human rights organizations such as CHRAC, CCHR and ADHOC. The actions of the government are also analyzed according to the International Covenant on Civil and Political Rights, which Cambodia has signed and ratified.