



The Committee for Free and  
Fair Elections in Cambodia

# Democracy, Elections and Reform in Cambodia



# 2013

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# Contents

I.	Introduction.....	1
II.	Executive Summary: Cambodia’s Democracy in Retreat .....	2
III.	Democratic Governance .....	4
	3.1 Power of the Legislative .....	5
	3.2 Independence of the Judiciary .....	9
	3.3 Executive Formation and Responsiveness .....	10
	3.4 Executive Accountability .....	14
	3.5 Executive Transparency.....	14
IV.	Democratic Elections .....	15
	4.1 Parliamentary Elections .....	16
	4.2 Electoral Dispute and Election Irregularity.....	18
	4.3 Post-Election Dispute and National Assembly Formation .....	22
	4.4 Political Negotiations and Electoral Reforms .....	25
	4.5 Prospects for Sub-National Council Elections 2014 .....	28
V.	Democratic Participation .....	31
	5.1 Freedom of Peaceful Assembly .....	33
	5.2 Freedom of Expression and Information .....	37
	5.3 Political Discourses .....	40
VI.	Recommendations .....	43
VII.	References .....	46

## Acronyms

ADB	Asian Development Bank
ADHOC	Cambodian Human Rights and Development Organization
ANFREL	Asian Network for Free Elections
ASEAN	Association of Southeast Asian Nations
BLDP	Buddhist Liberal Democratic Party
CAPDI	Centrist Asia Pacific Democrats International
CC	Constitutional Council
CCHR	Cambodian Center for Human Rights
CCIM	Cambodian Center for Independent Media
CDRI	Cambodian Development Resource Institute
CECs	Commune Council Election Commissions
CNP	Cambodian Nationality Party
CNRP	Cambodian National Rescue Party
CPP	Cambodian People's Party
CSO	Civil Society Organizations
ELC	Economic Land Concessions
ERA	Electoral Reform Alliance
FTU	Free Trade Union
FUNCINPEC	Front Uni National Pour Un Cambodge Independent, Neutre, Pacific et Cooperatif
GMAC	Garment Manufacturing Association of Cambodia
HRP	Human Rights Party
HRW	Human Rights Watch
ICAPP	International Conference on Asian Political Parties
ICG	International Crisis Group
ILO	International Labor Organization
IRI	International Republican Institute
KAPP	Khmer Anti-Poverty Party
KEDP	Khmer Economic Development Party
KPNLF	Khmer People's National Liberation Front
LDP	League of Democracy Party
LEMNA	Law on Elections of Members of the National Assembly
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
MoI	Ministry of Interior
NDI	National Democratic Institute
NEC	National Election Committee
NICFEC	Neutral and Impartial Committee for Free and Fair Elections
PECs	Provincial Election Commissions
PSCs	Polling Station Centers
RDP	Republican Democratic Party
RFA	Radio Free Asia
RFI	Radio France International
RGC	Royal Government of Cambodia
SCM	Supreme Council of Magistracy
SRP	Sam Rainsy Party
TIC	Transparency International Cambodia
UNDP	United Nations Development Program
UNESCO	United Nations Educations, Scientific and Cultural Organization
VOA	Voice of America
YCC	Youth Council of Cambodia

## I. Introduction

The Cambodian Committee for Free and Fair Elections (COMFREL) has since 2009 extended its observations and analysis of the electoral process to the overall democratization process in Cambodia. The analytical reports on the state of democracy titled ‘Democracy, Election and Reform’ are annually published and disseminated to all interested stakeholders. COMFREL supports the Royal Government of Cambodia in its objective to consolidate a liberal democracy based on Cambodia’s Constitution of 1993 and the related International Covenant on Civic and Political Rights, incorporated into the constitution and ratified by the Royal Government of Cambodia. The reports have the purpose to generate empirical data on the democratization process and to provide comprehensive analysis and advocacy for international and national stakeholders dedicated to Cambodia’s democratization process. The reports raise the following central question guiding the annual analysis and assessment of Cambodia’s democratization process: *Does Cambodia’s political system progress toward an established democracy or is stagnation or even a regression observable implying the democratization process has ended?*

In order to elaborate this question a qualitative roster of democracy indicators has been developed. They relate to previous annual reports to allow comparisons with past political developments. The democracy indicators include ‘Democratic Governance’, assessed in the first chapter, analysing the powers of the legislative, judiciary and executive based on the democratic principle of separation and limitations of powers. The chapter also analyzes executive performance based on the democratic governance principles of accountability, responsiveness and transparency. The democracy indicator ‘Democratic Elections’ analyzes the conduct of the parliamentary elections 2013 and the following dispute over the election results and the formation of a new National Assembly and government for the fifth legislature (2013-2018). The chapter also provides an analysis and prospects for the sub-national council elections in May 2014. It follows an analysis of the democracy indicator ‘Democratic Participation’. This chapter analyzes and assesses political participation in Cambodia based on the liberal democratic principles of political and civic freedoms including the right for freedom of expression and information and the right for freedom of peaceful assembly. This follows an analysis of political discourses in 2013 guided by the question if they are based on the democratic principles of mutual respect, tolerance and non-violence. The report closes with recommendations how to improve Cambodia’s democratization process.

Generated empirical data for the analysis of Cambodia's state of democracy in 2013 are based, like in previous reports, on findings of COMFREL's Advocacy and Monitoring Units 'Government Watch', 'Parliamentary Watch', 'Media Watch', 'Election Watch', 'Gender Watch', the 'Access to Information NGO Working Group', the Election Reform Alliance (ERA) and the situation room of civil society organizations (CSOs) monitoring the post-election stalemate after the parliamentary election 2013. COMFREL's monitoring groups adapt a mix of qualitative and quantitative research methods including sample surveys and statistical analysis of voter and media data and qualitative interviews, field observations and literature review of secondary data. Latter includes research results, studies and reports of different national and international stakeholders including reputed national and international media. All collected data are referred to in footnotes and the reference list to ensure reliability and verifiability of analysis and assessment of Cambodia's state of democracy in 2013.

## **II. Executive Summary: Cambodia's Democracy in Retreat**

The year 2013 marked twenty years of political transition in Cambodia. The twenty years anniversary over the end of a protracted civil war and first democratic parliamentary elections in 1993 led however to no public celebrations, but disillusionment over Cambodia's political future. The constitution 1993 had proclaimed to establish a liberal democratic political system based on the principles of a multiparty system and pluralism. The aim as proclaimed in the constitution and the preceding Paris Peace Treaties 1991 was to end the protracted civil war of the 1980s and to transform the formerly socialist government system to a liberal democratic system. Peace had returned to Cambodia, but the public expectation to consolidate a liberal democratic political system had not been met in the past two decades.

Like in previous years COMFREL observed a continuing deterioration of the democratization process. Despite efforts by different national and international stakeholders to strengthen Cambodia's democracy, the year 2013 marked a retreat of democracy and continued two decades of uncertainty over Cambodia's future political direction. In 2013 the Cambodian public increasingly expressed their inconvenience over the political uncertainties leading to an increase in strikes, protests, demonstrations and other manifestations of discontent, in particular electoral gains for the opposition in the parliamentary elections in July. By the end of 2013 deadly clashes between security forces, the opposition and striking workers marked a deepening political and social crisis continuing into 2014. Although parliamentary election were held in July 2013 and brought a strengthening of citizen engagement in politics, Cambodia's democracy remained in a fragile state. By the end of 2013 political developments headed towards a complete retreat of democracy. In particular freedom of assembly was severely constrained and the gov-

ernment and the national assembly were led by only one party in 2013. COMFREL found that political developments in 2013 continue to contradict international and national law which requires compliance with procedural standards of a liberal democracy within the framework of Cambodia's constitution of 1993. There was no separation of powers between the government branches, executive, legislative and judiciary. Partiality of courts persisted and interference of police, military police and armed forces into the political process has increased. These weaknesses became visible in particular during the parliamentary elections 2013 and the following post-electoral conflict. The CPP led executive continued to dominate the political process and relied increasingly on the formal and informal state security apparatus to respond to political pressures of the opposition. The legislative and judiciary continued to lack substantial powers to counterweight the influence of the executive. Responsiveness, transparency and accountability of the Cambodian executive declined. No reforms of the legal system, the electoral system and the state administration including the armed forces have been undertaken to improve executive responsiveness, transparency and accountability. No policies and no state institutions have been implemented to ease social tensions in 2013.

The political conflicts between CNRP led opposition and CPP- led government had reached a level of conflict intensity which implies little hope for a political reconciliation between the main contrahents and political progress toward the consolidation of a democratic political system in the fifth legislature (2013-18). Despite attempts from moderate wings in government and opposition, civil society, parts of the international community and King Norodom Sihamoni encouraging negotiations between the leadership of CPP and CNRP, the relations between opposition and government further deteriorated. No solution was found for the electoral dispute after the parliamentary election. The political stalemate over the formation of a new National Assembly and government for the fifth legislature continued into 2014.

Political patterns observed in previous years restricting political participation by limiting an open and constructive political discourse on issues of public concern, by weakening a competitive multiparty system and by narrowing the public space for political participation continued. Repressions of the state security apparatus, restrictive legal interpretations and enforcement of laws jeopardized civic and political rights, in particular the freedom of peaceful assembly and freedom of expression and information. Nationalistic, anti-vietnamese populism and insults against personalities of the government propagated by the opposition in 2013 provided the government justifications to restrict political participation.

### **III. Democratic Governance**

Democratic Governance in a democratic parliamentary system is defined by the political principles of separation and limitations of power and responsiveness, accountability and transparency of the three government branches. The Royal Government of Cambodia (RGC) and other state institutions (legislative bodies, the court) are legally and politically obliged to implement procedures of governance which comply with these democratic principles. The Cambodian constitution 1993 stipulates in Article 51, 128 and 130: ‘power shall be separated between the legislative power, the executive power and the judicial power’ (Article 51); ‘the judicial power is an independent power’ (Article 128); and ‘no organ of the legislative power or of the executive power can exercise any judicial power’ (Article 130). The constitution also limits power in stating, ‘the judicial power is guarantor of impartiality and the protector of the citizens’ rights and liberties’ (Article 128). COMFREL beside other international and national stakeholders continuously urges reforms to develop organizational and procedural rules to comply with these constitutional provisions. But reforms towards an effective separation and limitation of powers are outstanding to this day. The executive continues to control the political process, dominates the legislative and judiciary and lacks responsiveness, accountability and transparency in public policies.

#### **3.1 Power of the Legislative**

During the course of 2013 no major reforms of the National Assembly were made to improve its capabilities and powers. Tensions between opposition and government continued to paralyze the legislative powers like in previous years, complicated in 2013 by the electoral dispute and the following dispute over the formation of a new National Assembly and government. A lack of deliberation, a lack of scrutiny powers and a lack of representation of other political parties than the Cambodian People’s Party (CPP) in the legislative continue to undermine the constitutional principle of separation of powers and a core function of any legislative, to represent the people. Ahead of the parliamentary elections 2013 opposition members of parliament were expelled from the National Assembly. On 5<sup>th</sup> June, almost one year after the CNRP was formed the CPP dominated Permanent Committee of the National Assembly decided to illegally expel Sam Rainsy Party (SRP) and Human Rights Party (HRP) lawmakers from the National Assembly, claiming they formed a new party and no longer represented their political parties in the National Assembly contradicting current laws. The SRP and HRP have formed the CNRP in July 2012 to contest the parliamentary election 2013, but did not dissolve the SRP and HRP. The Law on

Political Parties prohibits party members to join more than one party (Law on Political Parties, Art. 15) and in case of party mergers the former party is automatically deleted from the party register (Art. 36).<sup>1</sup>

However the exclusion of the SRP and HRP from the National Assembly was in the perception of those parties not contradicting these laws as current electoral laws allow lawmakers losing their seat to be replaced by other party members at least six months before the next election (Constitution Art 95 and LEMNA, Chap. IX, Art. 120).<sup>2</sup> The SRP and HRP were also not dissolved or merged to form the CNRP, but the CNRP was found as a new party separate from SRP and HRP. The SRP also did hold on their seats in the Senate, the second chamber of the Cambodian parliament. Would the CPP interpretation of the law be appropriate, the SRP would have lost these seats as well. In the past Senate elections 2012 the SRP obtained nine more seats, totalling now eleven seats. The SRP is currently the only party represented in the Senate beside the CPP. The expulsion of SRP and HRP lawmakers on 5<sup>th</sup> June, six weeks before the parliamentary elections had obviously the purpose to weaken the opposition. After the elections the Permanent Committee of the National Assembly decided to repay the salaries of the expelled lawmakers reversing the expulsion of SRP and HRP lawmakers contradicting previous CPP statements.<sup>3</sup>

Because of the crisis of National Assembly and government formation after the electoral dispute over the conduct and result of the parliamentary elections (elaborated later in this report), the CNRP boycotted the newly formed National Assembly for the fifth legislature. As a result, only the CPP was represented in the newly formed and constitutionally disputed new National Assembly leaving the control over the legislature after July 2013 solely in the hands of only one party, the CPP. The expulsion of the opposition before the elections and later the parliamentary boycott left the legislative powerless against the executive throughout 2013. Controversial remains if the new National Assembly was formed according to the constitution. The CNRP insisted that a new National Assembly could not be formed without their participation referring to Article 76 of the Cambodian Constitution stipulating that a newly formed National Assembly must have at least 120 members of elected people representative. The CPP countered that the formation of the new National Assembly was rightful, because 123 candidates had been elected to become 123 members of the National Assembly. Since the CPP had gained 68 seats, which exceeds the required quorum of 62 seats to elect the president, vice-presidents and National Assembly commission members and also obtained a majority of parliamentary seats to form a new government, the CPP proceeded without the CNRP to form a new National Assembly and government. King No-

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<sup>1</sup> Xinhua News Agency: Cambodia defends expulsion of opposition lawmakers from parliament, 10.06.2013

<sup>2</sup> COMFREL Parliamentary Watch 2013

<sup>3</sup> Ibid.

odom Sihamoni followed the CPP interpretation and inaugurated the new National Assembly for the fifth legislature without participation of the CNRP on 23<sup>rd</sup> September 2013. The CNRP claimed that the National Election Committee (NEC) has only declared that 123 candidates were elected to be members of the National Assembly (NA), whereas the 55 elected CNRP candidates were not yet validated by the NA through the first meeting of the new NA or taking oath, leaving the parliament with only 68 lawmakers and therefore was illegitimate and contradicting the constitution. Prime Minister Hun Sen warned the CNRP that their candidates could lose their seats when they refuse to be validated. According to article 118 of Law on the Elections of Members of the National Assembly (LEMNA), elected candidates who refuse to be validated will obtain no seats. The vacant seats would in such cases automatically be redistributed to all other elected political parties who won seats in the National Assembly. In the 2013 NA election however only two political parties obtained seats. This would have meant solely the CPP would have been represented in parliament contradicting the constitution, article 1 stipulating the multi-party principle. The seats of CNRP were therefore not redistributed.

The dispute over the election results and the formation of the new National Assembly and government continued into 2014. As a result the CNRP was not involved in the election of members of the Permanent Committee of the new National Assembly, the election of members of the nine new parliamentary commissions, the confidence vote in 2013 for the re-elected CPP led RGC under Prime Minister Hun Sen and for the approval of laws in the last two months of the fourth legislature and the first six months of the fifth legislature. Also deliberations in plenary sessions of the National Assembly significantly dropped in 2013. COMFREL observed in the first half of 2013 that total 26 parliamentarians from the opposition and government held speeches in plenary sessions, totaling only 14 hours and 11 minutes on 14 draft laws elaborated and approved between January and May 2013. From June to December 2013 solely CPP lawmakers hold speeches in plenary sessions totalling 22 hours and 16 minutes.<sup>4</sup> The 2014 national budget was discussed for one morning in the plenary session solely by CPP lawmakers.

The declining power of the legislature is of particular concern when is considered that the opposition parties SRP and HRP were already since 2008 not represented in any of the nine parliamentary working commissions. Because CPP ignored the precious practice of sharing powers in the national assembly since 1993 and after the parliamentary election 2008 CPP occupied 90 of the 123 parliamentary seats, the CPP continued to exclude all other political parties from chairman positions in the commissions in the fourth legislature. The SRP and HRP in return had boycotted all nine parliamentary working commissions in the fourth legislature, arguing that in previous legislatures it was common practice that all

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<sup>4</sup> COMFREL Parliamentary Watch 2013

parties represented in parliament will obtain seats in the National Assembly Permanent Committee and chairman positions in one or more of the nine parliamentary commissions. This meant yet for the CNRP to give up their legislative power in the first year of the fifth legislature and proved so far to be an ineffective strategy to pressure the CPP leadership for genuine reforms. The legislature continued instead to be solely dominated by the CPP in the fourth and probably also in the fifth legislature.

Of concern is also that laws in 2013 were approved without elaborations of the opposition. The opposition was involved in only fourteen agendas for elaborations before the 2013 election. This included following items: (1) Law on the Organization and Functioning of the Supreme Council of National Defense (approved with 89/97 votes); (2) Law on the State Budget Expenditure for Management 2011 (77/86); (3) Law on the Adoption of the Insurance Settlement of the Royal Government of Cambodia to Hay Chrou Power Lover Sesan II Company (82/84); (4) Law on the Amendment of Article 9 and 10 on the Conditions of Civil Servants of the Kingdom of Cambodia (85/94); (5) Law on Fire Prevention and Firefighting (94/97), (6) Election of a new member for the Constitutional Council (83/97); (7) Law on Agricultural Community (80/83); (8) Law on the Amendment of Article 247, 368 and 382 of the Code of Criminal Procedures (83/89), (9) Ratification of an Agreement Between the Government of the Member Countries of the Association of Southeast Asian Nations and the Government of the Republic of China on Maritime Transportation; (10) ASEAN Framework Agreement on the Facilitation of International Transport, Protocol 6 on Border Railway and Railway Station, (11) Law on the Adoption of the Optional Protocol to Nagoya-Kuala Lumpur on Legal Liability and Compensation for Damage, Katazana Protocol on Biosafety (77/77), (12) Law on the amendment of Article 3, 29 and 30 on Anti-Money Laundering and Terrorist Financing, (13) Law on the amendment of Article 28 on the organization and functioning of the cabinet (83/89) and (14) Protocol II, 1999, of the 1954 Hague Convention on the Protection of Cultural Treasures during an Armed Conflict (83/83).<sup>5</sup>

It followed the approval of seven laws and four international protocols and three elections in the National Assembly after the elections 2013 not involving the CNRP. A controversial 'Law against the Denial of Khmer Rouge Crimes' was approved with the votes of CPP after the opposition had been expelled from the National Assembly. The other items included: (1) Law on the Creation of a Ministry of Public Functions, (2) Law on the Creation of a Ministry of Industry and Handicraft, (3) Law on the creation of a Ministry of Mine and Energy, (4) Law on financial management, (5) Law on compensation to Alexcom World Resen Company by the government and (6) Law on Goods Geographic Notification Marks. In addition four international protocols were approved without involvement of CNRP concern-

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<sup>5</sup> COMFREL Parliamentary Watch 2013, unofficial translation

ing economic cooperation agreements with ASEAN, the Republic of China, the People's Republic of China and Korea.<sup>6</sup> Throughout 2013 remained questionable against the background of these developments, how the legislative powers can be improved and a genuine separation of power can be achieved.

COMFREL appealed together with a consortium of civil society organizations named the situation room (CSO) for key reforms of the national assembly to contribute to a political solution including following recommendations:

- To maintain 'checks and balances' and to sustain the spirit of Cambodia's democratic system of governance both parties should accept to 'have won in the election' providing the CNRP the Presidency of the National Assembly (NA) and share an equal number of seats and chairs in the parliamentary working commissions between both parties whereas the CPP continues to control the executive.
- To reinforce article 96, 97 and 121 of the constitution to strengthen the legislative. Prime Ministers and members of the government should be obliged to interact and debate with the NA. There should be NA's impeachment provisions in case Prime Ministers and members of the government not comply. Term limits for the position of Prime Minister of two terms (10 years) should be applied. The constitution should be accordingly amended.
- To officially recognize and support a shadow government organized by the elected opposition party in the national assembly following the Australian model.
- To ensure that the interests of citizens and parliamentarians are met, COMFREL suggests that the expert commissions shall allow the public to observe its meetings and that the national assembly invite relevant civil society groups, local communities, private sector organisations and other relevant stakeholders to provide feedback, comments and recommendations on draft laws. So far all draft laws or agendas debated in plenary sessions, have been in the past legislature approved without change or revision, even when revisions were requested by the opposition. This makes the national assembly sessions little more than a forum for the formal approval of draft laws. True debate and revision of draft laws is made by expert commissions which, with the participation of a royal government official, are responsible for reviewing draft laws before placing them on the agenda of the plenary session. However, these expert commission meetings are taking place behind closed doors.
- To provide a realistic timeframe to relevant stakeholders, including members of parliament and public experts to review proposed draft laws and give their recommendations to members of the national assembly and expert committees. COMFREL observers found that agendas and draft laws are

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<sup>6</sup> COMFREL Parliamentary Watch 2013, unofficial translation

usually only distributed to the members of the NA 2 to 3 days prior to the final plenary session in which the law is to be approved. To guarantee that the NA is both transparent and representative of the people, COMFREL call on the NA secretariat to distribute draft laws to all parliamentarians and also to make them available to the public as soon as they are tabled for expert committee reviews.

### **3.2 Independence of the Judiciary**

No reforms were undertaken in 2013 to strengthen the independency of the judiciary. Twenty years after the adoption of a liberal democratic constitution, legal and judicial reforms in this direction have been constantly postponed. Only in 2003 the RGC for the first time announced a legal reform plan. It took however two more years to draft a law on the organization and functioning of courts and a law on the statures of judges and prosecutors and reforms of the Supreme Council of Magistracy (SCM). And then another nine years, before in February 2014, the newly formed and contested RGC did announce to approve legal and judicial reforms plans for the first half of 2014 with the aim to strengthen the independence of the judiciary. The political stalemate after the parliamentary elections 2013 yet made it questionable if meaningful judicial and legal reforms can be achieved should the opposition continue to be excluded from the reform process. Also civil society organizations have not been informed about the particulars of the new laws by February 2014 despite that the reforms are pending since one decade.<sup>7</sup>

Unsurprisingly public confidence in the legal and judicial system remains weak. Among national and international stakeholders is widely perceived that the weaknesses of the current legal and judicial system can be misused to silence opposition and dissent.<sup>8</sup> To this day the nine-member Supreme Council of Magistracy (SCM) overseeing the judiciary is under control of the CPP led executive. The SCM appoints and supervises judges and prosecutors for all Cambodian courts including the Constitutional Council, Appeal Court and Supreme Court. The SCM is composed of one executive member of the CPP led Ministry of Justice and three appointed members of the same ministry. The other five members of the SCM include the King, the Presidents of the Supreme Court and Appeal court and the General Prosecutors of the Supreme and Appeal Court. Known is also that the President and Vice-President of the Supreme Court are members of the permanent committee of the CPP.<sup>9</sup> Also the current chairman of CC is a member of the CPP permanent committee although CC regulations prohibit members to be affiliated to any political party. This ensures the CPP a majority vote in the Constitutional Council (CC) support-

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<sup>7</sup> COMFREL Government Watch 2013/14

<sup>8</sup> see for example CCHR: Briefing Note - Judicial Reform, Phnom Penh February 2013; UN: Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, May 2013 and September 2010; Bertelsmann Foundation: Transformation Index Cambodia 2014

<sup>9</sup> RFA: Lawmakers Summon Court Chief, 10.01.2013

ing allegations by the opposition that the CC is dominated by the CPP. Current constitutional provisions also only foresee that three of the nine CC members must be elected by the National Assembly, others are appointed by the executive. This raises the question if the current judicial system is democratically legitimized and how current proceedings can ensure an independent judiciary.<sup>10</sup>

### **3.3 Executive Formation and Responsiveness**

The legitimacy of the formation of a new executive after the parliamentary election 2013 remains controversial. As outlined previously not all 123 elected candidates for the National Assembly have yet been validated. Nonetheless on 24<sup>th</sup> September the CPP decided with the votes of only the 68 validated candidates of the CPP to elect chairmen and deputy chairmen for the parliamentary working commissions followed by vote of confidence for the new executive. This vote was done together in form of a ‘package vote’, despite that article 82 and 119 of the Cambodian Constitution stipulates a separate vote for both institutions. The current executive formation is disputed by the CNRP.

Whereas executive responsiveness had increased with reform announcements ahead of the parliamentary elections stronger efforts are needed by the RGC to counter increasing social and economic inequalities. Despite that the executive had been enlarged since the last mandate, the reforms seem to have served more considerations of patronage to ensure that the CPP led RGC under Prime Minister Hun Sen can sustain their power position than to improve public policies. During the fourth mandate, the Cambodian government led by Prime Minister Hun Sen included 450 members consisting of 28 ministers, 11 Ministers accompanying the Prime Minister, 9 deputy Prime Ministers and 15 senior ministers and 182 secretaries of state.<sup>11</sup> The Ministry of Interior reported in 2013 total 842 protests and strikes. In particular labor conflicts increased. The opposition affiliated Free Trade Union (FTU) reported for the textile sector in the first eleven months of 2013 total 136 strikes, up 35% percent to 2012, when 101 strikes were counted. This figure does not include 241 additional strikes in December 2013. The Garment Manufacture Association of Cambodia (GMAC), who represents the majority of textile companies in the country, counted for the textile sector 131 strikes in the first eleven months of 2013 leading to 826,000 days of lost labor.<sup>12</sup> Wages of textile workers decreased in real terms by 20 percent between 2001 and 2011.<sup>13</sup> In March 2013 the minimum wage was solely increased from 61 to 80 USD and after further unionist pressure to 100USD by the end of 2013. Unionists demand an increase of the minimum

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<sup>10</sup> COMFREL Government Watch 2013/14

<sup>11</sup> COMFREL Government Watch 2013/14

<sup>12</sup> Cambodian Daily: Free Trade Union Reports Overall Jump In Labor Strikes in 2013, 14.01.2014

<sup>13</sup> Cambodia Daily: Real Wages in Garment Sector Fell Over 10 Years, 15.07.2013

wage to 160USD. The RGC and GMAC oppose this demand, arguing that 160USD are economically unrealistic, because textile investors would move to other countries with lower wages.<sup>14</sup> As in previous years numerous cases of fainting of textile workers were reported caused by insufficient diet and poor factory conditions, although fainting halved in 2013 to 823 cases. In 2012, 1,686 cases were reported.<sup>15</sup>

The executive also continued to lack responsiveness for the concerning development of escalating land conflicts. Land conflicts increased in 2013, despite the initiation of a land-titling campaign by the RGC. ADHOC filed in March 2014 105 complaints to local courts and other state agencies on behalf of 11,000 families involving older land disputes over 26,500 hectares in 17 provinces. Some disputes are ongoing since more than a decade.<sup>16</sup> Publicly well-known land conflicts like the Boeng Kak Lake and Borei Keila cases among others have not been resolved. New land conflicts were reported by other stakeholders for the provinces of Preah Vihear, Oddar Meanchey, Koh Kong, Pursat, Ratanakiri, Battambang and Kratie in 2013.<sup>17</sup> The land-titling campaign initiated before the elections personally by Prime Minister Hun Sen, financed by him privately and a freezing of the issuing of economic land concessions (ELCs) have only partly ensured undisputed land-titles and not resolved pending land conflict cases.<sup>18</sup> It is estimated that over three million hectares of land, which is approximately 16.6% of the total 181,035 km<sup>2</sup> of land in Cambodia, have been granted through ELCs to foreign and domestic companies, as well as to wealthy political elites, for industrial development. Since 2000, some 700,000 Cambodians have been adversely affected by ELCs throughout the country.<sup>19</sup> During the land-titling campaign in 2013 land titles were issued, but not enforced as reported for the provinces of Pursat, and Battambang where companies continued to occupy land returned to citizens. Also in Kampong Speu land titles were first issued to concerned citizens but then sold to private companies.<sup>20</sup> The RGC and Hun Sen had been alleged to have initiated the land-titling campaign with the sole political purpose to support their election campaign for the commune election 2012 and parliamentary election 2013.<sup>21</sup>

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<sup>14</sup> RFA: Cambodian Garment Factories Closed Due To Wage Strikes, 30.12.2013

<sup>15</sup> Phnom Penh Post: Fainting's halved in 2013, 17.02.2014

<sup>16</sup> Phnom Penh Post: 11,000 Families Refile Old Land Dispute Complaints Nationwide, 20.03.2014

<sup>17</sup> Phnom Penh Post: Families Say Land Was Taken, 24.05.2013; Villagers Camp out to Protest Land Grab, 27.05.2013; Land Battle Headed to Court, 27.05.2013; Villagers Seize Trucks in Protest, 28.05.2013; Villagers Say Company Deceived Them in Deal, 30.05.2013; Homes, Trees Destroyed, Villagers Say, 31.05.2013; Ratanakiri Dispute Case Drags On, 06.06.2013; Land Complaint Filed, 11.07.2013

<sup>18</sup> LICADHO: Activity Report, January to June 2013, Phnom Penh August 2013

<sup>19</sup> CCHR: Cambodia – Land in Conflict. An Overview of the Land Situation, December 2013; ADHOC: A Turning Point? Land, Housing And Natural Resources Rights in Cambodia in 2013, February 2013

<sup>20</sup> Phnom Penh Post: Land Title Program Ineffective, 16.09.2013

<sup>21</sup> LICADHO: Activity Report, January to June 2013, Phnom Penh August 2013

Likewise regressions in the education sector seem to be ignored by the executive. No reforms were initiated to increase wages and working conditions of teachers, to improve educational quality, to increase enrollment in secondary education and to lower dropout rates. Currently only about 45% of Cambodian youth absolve secondary education.<sup>22</sup> In 2013 teachers staged a number of protests demanding higher wages.<sup>23</sup> Currently primary school teachers earn 72USD, secondary school teachers 90USD and high school teachers 144 USD per month. The former Minister of Education, Im Sethy, who was replaced after the election 2013 criticized that the state budget for the public education sector has decreased since 2007.<sup>24</sup> International investors continue to criticize the low level of education of Cambodia's working force and warned that Cambodia's economic growth could be hampered because of low levels of education. A survey of the International Labor Organization (ILO) found that from the 7.2 million counting working force of Cambodia, only 35.5% completed secondary and only 3.8% a tertiary education.<sup>25</sup>

Even though efforts were made by the executive to lower the poverty rate in the past two decades and the absolute poverty rate had declined since 2004, poverty rates continue to be high in Cambodia. The World Bank revealed in a recently released study of February 2014, that the absolute poverty rate had declined by 32.95% from 53% in 2004 to 20.5% in 2011. The study claims that in 2004 6.8 million Cambodians had to live with less than 1,15 USD per day, defined as absolute poverty, while in 2011, 3 million Cambodians had to live with this amount of money per day.<sup>26</sup> Half of the decline in absolute poverty had been achieved by increasing productivity in rice production indicating that economic reforms of the executive take hold. The World Bank study had however also to reveal that relative poverty defined as living below 2.30USD per day, being 'near poor' grew from 4,6 million in 2004 to 8,1 million in 2011. The loss of just 0.30 USD income per day for those 'near poor' Cambodian citizens would mean that 40% of Cambodia's population would slip back into absolute poverty.<sup>27</sup> The multidimensional international poverty index of the UN Human Development Report 2013 estimates that in 2010 (no newer data available) 46% Cambodians lived in severe poverty or were vulnerable to severe poverty.<sup>28</sup>

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<sup>22</sup> UNESCO: World Data on Education, Edition 2010/11

<sup>23</sup> Phnom Penh Post: Grade 9 Test Pushed Back Amid Protest, 16.09.2013

<sup>24</sup> Cambodia Daily: Education Minister Rails Against a Lack of Funding, 01.02.2013 and Poor Education Could Cripple Business Growth, 29.11.2013

<sup>25</sup> ILO: Cambodian Labor Force and Child Labor Survey 2012: Labor Force Report, November 2013

<sup>26</sup> World Bank: Press Release – Poverty has fallen, yet many Cambodians are still at risk of slipping back into poverty, new report finds, 20.02.2014; Phnom Penh Post: Poverty Gains 'Precarious', 21.02.2014

<sup>27</sup> Phnom Penh Post: Opinion - Ulrich Zachau World Bank Country Director Cambodia – And Now For the Really Hard Part, 19.02.2014

<sup>28</sup> UNDP: Human Development Report 2013, March 2013

The executive nonetheless continued to lack responsiveness towards policy inputs of the opposition and government critical civil society organizations to improve development policies towards a more inclusive and social sustainable development.<sup>29</sup> Some civil society organizations were accused to incite social unrest and mobilize political support for the opposition during demonstrations following the electoral dispute after the parliamentary elections later outlined in this report.<sup>30</sup> Likewise, the legislative has not been strengthened to scrutinize the effectiveness of current development policies other than to approve the appraisal report 'Rectangular Strategy for Growth, Employment, Equity and Efficiency Phase III' by the controversially re-elected CPP led RCG under Prime Minister Hun Sen published in September 2013.<sup>31</sup>

Executive responsiveness seem to continue to be more concentrated on the demands and requirements of the international market to receive investments, loans and donations, than to the intergenerational economic and social needs of Cambodian citizen whose dependency on the international market and donor community continues to rise and at the same time erode the semi-subsistence agro-economy on which the majority of Cambodian citizens depend. It is not visible if current economic policies are redirected towards strengthening domestic trade, production and consumption, reducing economic dependency on the international market and donor community and initiate a gradual transition of the semi-subsistent towards a semi-industrialized economy. Reports of CDRI, UNDP and ADB reveal shortcomings of current development policies, in particular a lack of development of the agro-economy, a lack of diversification of the local economy and persistent low educational levels of the labor force.<sup>32</sup>

Positively, the state budget 2014 brings increases for the agriculture, social, health and education sector indicating possible changes of RGC policies for the fifth legislature. The largest budget post however is reserved also in 2014 for the security sector. Latter will receive 489 million USD, which is an increase of 17%. The education sector will receive 335 million USD which is an increase of 19.6%, the health sector 244 million USD which is an increase of 8.4%, the Ministry of Social Affairs 144 million USD which is an increase of 37% and the Ministry of Agriculture 40 million USD which is an increase of 13%.<sup>33</sup>

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<sup>29</sup> CDRI: Sub-National Civil Society in Cambodia: A Gramscian Perspective, Working Paper Series No. 84, October 2013

<sup>30</sup> Cambodia Daily: Sar Kheng Warns NGO's Not to Aid CNRP's Demonstrations, 12.09.2013

<sup>31</sup> Royal Government of Cambodia: Rectangular Strategy for Growth, Employment, Equity and Efficiency Phase III, September 2013

<sup>32</sup> CDRI: Cambodia's Economic Outlook for 2013: Possibilities and Priorities for Sustainable and Inclusive Growth, Phnom Penh 2013, UNDP: Industry-Agriculture Linkages: Implications for Rice Policy, Discussion Paper No. 9, March 2013; ADB: Cambodia: Rapid Economic Growth with Institutional Constraints, ADB Economic Working Paper Series, No. 331, January 2013

<sup>33</sup> Xinhua News Agency: Cambodian Parliament Approves 3.53 Billion USD Government Spending for 2014, 12.11.2013; Phnom Penh Post: Budget Passes Sans Opposition, 12.11.2013

### **3.4 Executive Accountability**

Measures to increase executive accountability remained in 2013 behind public expectations. Although the anti-corruption campaign continued, it has not gained on effectiveness. Few measures have been taken by the executive to hold the state administration including the security apparatus accountable. No public anti-corruption campaigns were conducted to increase awareness among the Cambodian public how to put forward cases against state officials and ensure them protection from possible repercussions. A culture of impunity for state officials seem to continue despite that public opinion polls indicate that awareness about the problem of corruption is high and is seen as one main contributing factor for the staggering economic and social progress. But neither the legislative nor judiciary had been empowered for democratic oversight. No reforms were initiated to establish institutions independent from the executive to scrutinize extractive and distribute public policies of the executive in the past years. The Anti-Corruption Unit and National Audit Authority are widely perceived to be dominated by the CPP led executive and ineffective. Cambodia is perceived as a 'highly corrupt state' and has further fallen in the Perceived Corruption Index in 2013 from Rank 157 to 160 out of 173 states.<sup>34</sup>

### **3.5 Executive Transparency**

The executive has in 2013 not initiated major reforms to increase transparency in their day-to-day activities and public policies. Few if any announcements over public policies over the progress and problems of Cambodia's social and economic development are made. The state news agency and the Quick Press Reaction Unit of the Council of Ministers, the main government organ, focus in their reporting mainly on verbal attacks and criticism of the opposition, speeches of Prime Minister Hun Sen, receptions, inaugurations and diplomatic meetings of government officials and inaugurations of infrastructure projects. Seldom information is released on the effectiveness of public policies implemented by the executive other than economic data demonstrating economic growth and investment and sporadic statistics produced by the National Institute of Statistics about the social and economic situation in the country. The Cambodian public seems to be widely ill-informed when not excluded from the public policy process other than media campaigns emphasizing the achievements of the current government.<sup>35</sup>

Public opinion surveys conducted in 2013 reveal that public policies other than infrastructure policies are rarely known in the Cambodian public. A recently released survey of the International Republican Institute (IRI) asked Cambodians the question: Why do you think the country is moving in the right di-

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<sup>34</sup> Transparency International (TI): Perceived Corruption Index 2013, In addition civil society stakeholders have not been involved and informed about the particulars of the new laws which are pending since 2005. [www.transparency.org](http://www.transparency.org)

<sup>35</sup> COMFREL Media Monitoring and Government Watch 2013

rection? Among 18 items responded in open-ended questions by 55% of the population, the first five items which were listed included solely improvements in infrastructure (roads 72%, schools 57%, health clinics 27%, bridges 18% and pagodas 16%).<sup>36</sup> Less than 10% of interviewees listed less poverty, more factories/companies and more jobs. Less than 5% listed improvements in education, economic growth and improvements in the agro-economy. Also to this day no Freedom of Information Law has been approved to increase executive's transparency with the aim to better inform and communicate public policies. In 2013 the National Assembly rejected with the votes of CPP the approval of such a law. The Ministry of Information (MoI) referred to the costs implied with its implementation and the complexity over content and extent to which a law on the freedom of access to information should apply. The MoI however announced to prepare a law within the next three years, explaining that it will need time to duly develop it and educate government officials about the law in order to implement it effectively.<sup>37</sup>

#### **IV. Democratic Elections**

The fifth parliamentary election since the end of the civil war clearly dominated Cambodia's political process throughout the year 2013. Ahead of the parliamentary elections Cambodia's political process was overwhelmingly dominated by the electoral campaign which started in the first months of 2013. The official election campaign had been conducted from 27<sup>th</sup> June to 26<sup>th</sup> July 2013. The campaign was accompanied by polarizing political discourses over the integrity of the political leadership of opposition and government and the electoral process. In particular the integrity of the voter registration process was put into question. Despite that numerous election irregularities were observed by domestic and international observers, the fifth parliamentary election had been conducted peacefully with few exceptions. The following severe electoral dispute over irregularities and the election results however paralyzed the democratization process. Doubts over the integrity of the electoral process and election results and doubts over the legitimacy of the newly formed National Assembly and for the fourth time re-elected RGC under Prime Minister Hun Sen led to mass demonstrations and labor protests throughout 2013 and the first month of 2014. By the end of 2013, the democratization process came to a standstill. The re-elected government decided to repress opposition and labor protests with a large scale security build up and the prohibition of public assemblies in January 2014. The directive of the Council of Ministers to prohibit peaceful assemblies 'until public order is restored and return to normal'<sup>38</sup> was rigorously enforced by security forces. Human Rights organizations criticized an excessive use of force and unlaw-

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<sup>36</sup> IRI Survey of Cambodian Public Opinion, October-28-November-10, 2013, 23.01.2014

<sup>37</sup> COMFREL Government Watch 2013

<sup>38</sup> Phnom Penh Post: Freedom of Information Law Dealt Blow, 24.01.2013

ful arrests of opposition, labor union and civil society activists who refused to follow the directive.<sup>39</sup> Negotiations between CNRP and CPP over electoral reforms and the formation of the new National Assembly stalled and had been repeatedly postponed after numerous failed attempts until April 2014.

#### 4.1 Parliamentary Elections

The NEC final election results of the parliamentary election 2013 indicate a fundamental change in voter support. Significant vote losses for the CPP for the first time since 1993 were observed. Since the first NA elections after the civil war in 1993, the CPP had continuously increased its voter support from 40% in 1993 to 42% in 1998 to 47% in 2003 and to 58% in 2008. But in 2013 the trend reversed to a declining voter support to 49%. Even though the CPP could secure a majority of seats in the National Assembly, the party lost 22 parliamentary seats to the parliamentary election 2008, when CPP gained 90 seats. The newly formed oppositional CNRP in contrary increased its voter support significantly by more than one million votes, securing 26 more parliamentary seats than in the election 2008, when SRP and HRP secured together 29 seats. The election results were a surprise vote for the CPP, when is considered that CPP had gained a clear majority of votes in the preceding commune election in 2012 with 61% of total votes indicating a secure re-election of the CPP at the parliamentary election 2013.<sup>40</sup>

Compared with the commune election results of 2012, the CPP had lost thirteen percent of votes, whereas the CNRP succeeded to gain fourteen percent more votes. The CPP also lost with the exception of the province of Ratanakiri for the first time votes in all provinces and municipalities sliding down from 3,632,082 votes casted for the CPP in the commune election (61%) to 3,235,969 votes in the parliamentary election 2013 (48%). Remarkable is that in the election 2013 741,252 voters more casted their vote than in the commune election 2012. The higher voter turnout did however not advantage the CPP but the CNRP. In the commune election 2012, total 5,993,992 of 9,203,493 voters casted their vote which is a voter turnout of 65%<sup>41</sup>. In the parliamentary elections 6,735,244 casted their vote of total 9,509,732 registered voters, which is a voter turnout of 70%. The CNRP increased its support from 1,804,943 (29%) to 2,946,176 votes (44%) and won in all provinces and municipalities in 2013 more and often significant more votes than in the commune election 2012. Only FUNCINPEC gained an equal number of votes in both elections (4%). Table 1 below provides all national election results since 1993:

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<sup>39</sup> LICDAHO: Summary Paper - When Freedom Meets Oppression: Timeline of Recent Events, 31.01.2014

<sup>40</sup> COMFREL: Final Report and Assessment of National Assembly Election 2013, [www.comfrel.org](http://www.comfrel.org)

<sup>41</sup> COMFREL: Final Report and Assessment of Commune Council Election 2012, [www.comfrel.org](http://www.comfrel.org)

**Table 1: Election Results of Parliamentary Elections in Cambodia from 1993 to 2013**

Political Parties	Total Votes					Votes %					NA Seats				
	1993	1998	2003	2008	2013	1993	1998	2003	2008	2013	1993	1998	2003	2008	2013
CPP	1.533.471	2.030.790	2.447.259	3.492.374	3.235.969	38.2	41.4	47.3	58.1	48	51	64	73	90	68
FUNCINPEC	1.824.188	1.554.405	1.072.313	303.764	242.413	45.5	31.7	20.8	5	3.7	58	43	26	2	-
NRP	-	-	-	337.943	-	-	-	-	5.6	-	-	-	-	2	-
CNRP	-	-	-	-	2.946.176	-	-	-	-	44.5	-	-	-	-	55
SRP	-	699.665	1.130.423	1.316.714	-	-	14.3	21.9	21.9	-	-	15	24	26	-
HRP	-	-	-	397.816	-	-	-	-	6.6	-	-	-	-	3	-
BLDP	152.764	-	-	-	-	3.8	-	-	-	-	10	-	-	-	-
Moulinika	55.107	-	-	-	-	1.4	-	-	-	-	1	-	-	-	-
Others	446.101	617648	532590	161.666	202.601	11.1	12.6	10	2.8	3	-	-	-	-	-
<b>Registered Voters</b>	<b>4.764.430</b>	<b>5.488.029</b>	<b>6.749.876</b>	<b>7.828.219</b>	<b>9.509.732</b>										
<b>Voter Turnout</b>	<b>4.267.192</b>	<b>5.057.830</b>	<b>5.277.494</b>	<b>6.100.884</b>	<b>6.735.244</b>	<b>89.6</b>	<b>93.7</b>	<b>83.2</b>	<b>75.1</b>	<b>69.6</b>					

The preceding electoral campaign had obviously mobilized the Cambodian public to the disadvantage of the ruling CPP. The newly formed opposition party CNRP succeeded to mobilize the Cambodian public on a political platform emphasizing social and economic injustices and inequalities, but also popularized anti-vietnamese resentments to mobilize support. Land-conflicts, wide-scale poverty, low wages, unemployment and underemployment, a lack of leadership change, a lack of legal, social and economic reforms to strengthen the domestic economy, in particular the agriculture sector, inflation, corruption, human rights violations by the security apparatus, a lack of independence of the judiciary and the exclusion of the opposition from the political process in the past fourth legislature provided the opposition a large space for political agitation against the CPP led government under Prime Minister Hun Sen.

Negatively anti-vietnamese resentments in Cambodia's public were exploited by the CNRP leadership to allege the CPP of advantaging Vietnamese companies and citizens to the disadvantage of the majority Khmer population and questioned their legitimacy to rule. The CPP had first come to power with support of Vietnam in 1979 providing the CNRP a platform of allegations against the CPP to be not 'truly Khmer'. The anti-vietnamese campaign backlashed on CNRP. It alienated potential CNRP supporters and raised concerns among Cambodian Vietnamese and other minorities including the Cham and Khmer Loue (a variety of ethno-linguistic groups) who tended to vote for CPP in the 2013 election.<sup>42</sup>

COMFREL's analysis of election results found that the significant vote losses of CPP are explained mainly by vote transfers from former CPP voters who have turned to the CNRP and by new voters who have more often voted for the CNRP. 741,252 voters more had casted their vote in 2013 than in the

<sup>42</sup> COMFREL: Final Report and Assessment of National Assembly Election 2013, [www.comfrel.org](http://www.comfrel.org)

commune election 2012. Other vote gains by CNRP are explained by vote losses made by FUNCINPEC and the other five minor political parties contesting in the parliamentary election 2013. FUNCINPEC had not been successful in preserving its popularity gained in the parliamentary election 1993. The party continuously lost voter support until 2013, leaving FUNCINPEC without a parliamentary seat for the first time since 1993. All five minor parties failed in the past and in this national election to win a parliamentary seat. Among the five minor political parties, only two, the Khmer Anti-Poverty Party (KAPP) and the League for Democracy Party (LDP) had contested in previous National Assembly elections in 2008 and commune council elections in 2012. The Republican Democratic Party (RDP) and the Cambodian Nationality Party (CNP) have contested only in the commune election 2012. The Khmer Economic Development Party (KEDP) ran for the first time in the parliamentary election 2013. Only the LDP and CNP succeeded to gain commune council seats in the commune elections 2012. The LDP won 8 seats, the CNP one seat.<sup>43</sup>

The CNRP won in particular in provinces and municipalities an absolute majority of votes and seats, which have the highest district magnitude. This includes Kampong Cham (10/8), Kandal (6/5), Phnom Penh (7/5) and Prey Veng (6/5). In provinces where fewer seats were distributed, CNRP failed to win a majority of seats or had only an equal number of seats than CPP. This indicates that a more proportional election system would be to the advantage of the opposition. Currently only 15 of the 24 provinces are multi-member electoral constituencies. The election results 2008 also reveal that never before has any other contesting political party except the FUNCINPEC come so close to an electoral victory over the CPP in total number of votes in national elections. Though the seat allocation brought a majority of seats for CPP with 68 against 55 seats for CNRP, the CPP won with only a difference of 289,793 in total number of votes against CNRP. In the parliamentary election 2008 the CPP secured in all 24 provinces and municipalities a majority in total number of votes and number of parliamentary seats allocated.<sup>44</sup>

## 4.2 Electoral Dispute and Election Irregularity

Despite significant electoral gains, the election results were rejected by the CNRP. The CNRP had failed by only a tight margin to win a majority of total votes and claimed electoral fraud. The CNRP insisted to have won according to own calculations 63 and CPP 60 seats contradicting the official election results.<sup>45</sup> COMFREL and other national and international observes including ANFREL and NICFEC among

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Cambodia Daily: CNRP Defends Election Victory Claim of 63 Assembly Seats, 01.08.2013

others found that the election process was marred by irregularities and weaknesses raising doubts about the integrity of the electoral process and left it open if the election results were credible and accurate. However no observer organizations with the exception of Human Rights Watch claimed electoral fraud.<sup>46</sup> COMFREL concluded that the election were not yet free and fair and found in its calculations of the election results that CPP gained 67 and CNRP 56 seats only slightly contradicting the election results of the National Election Committee, who allocated 68 seats for CPP and 55 seats for CNRP.<sup>47</sup>

The National Election Committee (NEC) countered the criticism with claims that the electoral process overall had improved, appraised its performance but acknowledged that there is space for improvement, in particular in the voter registration. In a ‘White Paper’<sup>48</sup> released after the elections, the NEC claimed that *‘the 2013 election, throughout the voter registration, the month-long election campaign, the “white day” and the polling and vote-counting day, was carried out in a smooth and peaceful manner. In contrast to some countries, not a single case of political assassination was reported, and no serious violence was noted except for one incident in the polling station at Steung Meanchey, Phnom Penh, where two police cars were set on fire’*<sup>49</sup>. The NEC further claimed in the white paper that *‘Virtually all international observers expressed positive opinions in their evaluation of the election process during the press conference held at the Phnom Penh Hotel on 28 July 2013’*<sup>50</sup>. Latter statement ignored that a number of national and international election observer missions including COMFREL, NDI, NICFEC, TIC, ANFREL, ERA, HRW, LICADHO, and the Delegation of the European Union to the Kingdom of Cambodia and the Embassy of the United States to Cambodia were critical of the electoral process. The international observers the NEC referred to included solely the International Conference on Asian Political Parties (ICAPP) and the Centrist Asia Pacific Democrats International (CAPDI). Both organizations were invited by the NEC and were financially supported by the CPP putting their impartiality into question. Also never before had the NEC set up a joint cooperation with international observer groups and jointly conducted a press conference to appraise the national election 2013.<sup>51</sup>

The RGC through the Council of Ministers Press Quick Reaction Unit countered the criticism also with an own ‘White Paper’<sup>52</sup> instigating that the CNRP wanted to overthrow the government, not respected procedures as stipulated in the constitution, misled the public, fomented racism and xenophobia and

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<sup>46</sup> Human Rights Watch (HRW): Cambodia: Ruling Party Orchestrated Vote Fraud, 31.07.2013

<sup>47</sup> COMFREL: Final Report and Assessment of National Assembly Elections 2013, December 2013

<sup>48</sup> National Election Committee (NEC): White Paper - The 2013 General Election for the 5<sup>th</sup> Mandate of the National Assembly of the Kingdom of Cambodia, 05.09.2013

<sup>49</sup> Ibid., p. 36

<sup>50</sup> Ibid., p. 36

<sup>51</sup> COMFREL Election Watch 2013/14

<sup>52</sup> Office of the Council of Ministers – Quick Press Reaction Unit: White Paper on the 2013 General Election for the 5<sup>th</sup> Mandate of the National Assembly of the Kingdom of Cambodia, 17.09.2013

did not provide evidence for its claims of electoral fraud. The RGC claimed that *‘The election was held in a smooth and peaceful manner. The success of the election reflects the remarkable progress in implementing democracy in Cambodia. Cambodian citizens fully enjoyed their freedom and rights to express their will at all stages of the election process. They participated in the election campaigns in order to express support for their preferred political parties without fear. Activists of each political party carried out their political activities freely and without any pressure or intimidation from anyone. Throughout the election process, neither a case of severe violence affecting the election process nor any form of harassment or political assassination of any political party member was reported. The election was held in the presence of 292 international observers and 40,142 national observers including COMFREL’s at all polling stations, who confirmed that the election was conducted in a free, fair, transparent and acceptable manner without intimidation or violence’*<sup>53</sup>. Some domestic and international observer organizations critical of the electoral process were accused to be biased towards the opposition including COMFREL. In particular the Electoral Reform Alliance (ERA)<sup>54</sup>, a consortium of 20 domestic and international observers including COMFREL has been alleged of being biased and inaccurate in its assessment and suspected to support the CNRP. ERA had released in November 2013 a critical report on the electoral process.<sup>55</sup> According to the perception index of Electoral Integrity (PEI)<sup>56</sup> Cambodian election ranked in 2013 among the worst with a score of only 45.6 (the PEI Index is standardized to 100 points scores), ranking Cambodian election worldwide only on place 69 among 73 states due mainly to concerns about voter registration, the compilation of election results and the independence of electoral authorities.

Even if no systematic electoral fraud could be proven by any domestic and international organizations, election irregularities did indeed occur and in comparison to past elections left the impression for COMFREL that the election process had not improved. Of major concern was once again like in previous elections the voter registration. The voter registration had led already in the forefront of the parliamentary elections to controversies. COMFREL and other domestic and international observer organizations had conducted audits of the voter registration which implied that problems might occur on Election Day.<sup>57</sup> COMFREL estimated that 1.25 million eligible voters were possible disenfranchised, mainly because of missing names on the voter’s list, where names had been changed, misspelled, used by some-

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<sup>53</sup> Ibid., p. 3-4

<sup>54</sup> Electoral Reform Alliance: Joint-Report on the Conduct of 2013 Cambodian Elections, Phnom Penh November 2013

<sup>55</sup> Office of the Council of Ministers – Quick Press Reaction Unit: Commentary - How the ERA Manipulated the Media, 17.02.2014

<sup>56</sup> The Electoral Integrity Project is an independent non-profit scholarly research project based at Harvard University’s Kennedy School of Government and the University of Sydney’s Department of Government. Around forty domestic and international experts were consulted about each election, with requests to participate sent to a total of 2,901 experts, producing an overall mean response rate of 30%. The survey results in this report are drawn from the views of 855 election experts. See webpage, [www.electoralintegrityproject.com](http://www.electoralintegrityproject.com).

<sup>57</sup> National Democratic Institute (NDI): Report on the Voter Registry Audit (VRA) in Cambodia 2013, Phnom Penh 2013

one else or deleted.<sup>58</sup> The NEC reacted on these concerns with an own audit, claimed the problems were exaggerated, though confirmed there is need for further improvements.<sup>59</sup>

Like in previous elections also the political atmosphere has not been conducive for the conduct of free and fair elections. During the entire election period the political environment was disturbed by an atmosphere of intimidation and fear with threats made to voters and opposition political party activists. Prime Minister Hun Sen and CPP affiliated media repeatedly warned of the possibility of having war or the military seizing power if there would be a change of government.<sup>60</sup> Prime Minister Hun Sen publically announced on 11<sup>th</sup> June: *I have real indicators showing that war will take place if these guys are elected. There will be both an internal war and an external war, especially a war with Vietnam*<sup>61</sup>. Likewise Sam Rainsy had warned a day before of civil war after SRP and HRP lawmakers had been expelled from the parliament: *By expelling all opposition deputies from the National Assembly and in proclaiming, arbitrarily and illegally, the end of their mandates based on universal suffrage, Prime Minister Hun Sen has created the preconditions for a civil war*<sup>62</sup>. Unimpressed by the war rhetoric the Cambodian population nonetheless participated in greater numbers in the electoral process than in previous elections, in particular young voters and women. The voter turnout had significantly increased in comparison to the commune elections from 65% to 70%. More Cambodians have demonstrated during the election campaign that they know their political and civic rights expressing political opinions. More participated in political events without fear of reprisals.<sup>63</sup>

Also the election campaign lacked in the fifth parliamentary election again an equal level playing field. The absence of equal access to and use of media, specifically television and radio, with excessive airtime and the misuse of state resources in favor of the ruling CPP disadvantaged other contesting political parties. COMFREL found between September 2012 and July 2013 that private and state TV and radio stations pre-dominantly broadcasted campaigns for the CPP. Their campaign was also again supported with state resources contrary to current laws prohibiting this practice. This included the employment of civil servants for campaigns, the use of state vehicles, public buildings and premises and the use of public events like inaugurations, graduation ceremonies and other festivities for CPP campaigns.<sup>64</sup>

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<sup>58</sup> COMFREL: Final Report on Survey of Voter List, Voter Registration, and Audit of the Voter List plus Verification of the Deletion Forms for the 2013 National Election (SVRA-Plus), April 2013

<sup>59</sup> National Election Committee (NEC): The 2013 National Assembly Election: Voter Registration in Cambodia, the Audits on the 2012 Official Voter's Lists, and Issues, July 2013

<sup>60</sup> Cambodia Daily: Will Hun Sen's Threat Of War Translate Into Votes?, 27.06.2013

<sup>61</sup> Prime Minister Hun Sen cited in Cambodia Daily: Hun Sen Says Civil War Would Be Opposition's Fault, 11.06.2013

<sup>62</sup> Sam Rainsy cited in Cambodia Daily: Rainsy Says Climate In Cambodia Is Ripe For Civil War, 10.06.2013

<sup>63</sup> COMFREL: Final Report and Assessment of National Assembly Election 2013, December 2013

<sup>64</sup> Ibid.

The election administration remained as well again a major issue of contention. Even though the election administration is since 2003 alleged to lack independency and impartiality, the election administration has not been reformed.<sup>65</sup> The election system continued likewise in 2013 to lack proportionality. Despite that Cambodia's population increased since 2003 from 13 to 14.5 million citizens and migration have changed the demographics in provinces, the number of seats had not been increased in the National Assembly and seats were not re-allocated to adapt to these demographic changes. Problems persisted also in the enforcement of the current electoral legal framework, in particular the polling and counting process and the election dispute resolution. The number of irregularities recorded at polling stations in 2013 was with 11,402 cases more than the total number of irregularities observed in the 2003 and 2008 elections. In 2003 COMFREL recorded 3,723 irregularities and in 2008, 2,012 irregularities.

### **4.3 Post-Election Dispute and the National Assembly Formation**

The numerous election irregularities observed in this election plus the relative narrow electoral victory of the CPP compared to previous elections, left in the perception of the opposition CNRP no other option than to reject the election results and to boycott the formation of a new National Assembly and government until election irregularities are investigated. The CPP criticized the rejection of election results as a 'manoeuvres and tricks'<sup>66</sup>, accepted the election results and congratulated the NEC for the conduct of the parliamentary elections. The CPP responded to the pressures of the CNRP only with negotiation offers, but proceeded at the same time to form a new National Assembly and government in September 2013 which was backed by King Norodom Sihamoni after he had appealed for negotiations between the CPP and CNRP. No agreement was reached by April 2014 to end the political stalemate jeopardizing the democratization process leaving the Cambodian public in uncertainty over the future political direction of the RGC.

Demonstrations of the CNRP and strikes of labor unions in the textile sector gained momentum by the end of 2013 and January 2014 increasing the political pressure on the CPP to resolve the electoral dispute and find ways out of the political stalemate over the formation of the National Assembly and government. After a period of tolerance towards the freedom of peaceful assembly by the reelected CPP led government under Hun Sen followed repressions of demonstrations and protests organized by the CNRP and affiliated labor unions. The new CPP led RGC prohibited peaceful assemblies and justified

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<sup>65</sup> Ibid.

<sup>66</sup> Office of the Council of Ministers – Quick Press Reaction Unit: White Paper on the 2013 General Election for the 5<sup>th</sup> Mandate of the National Assembly of the Kingdom of Cambodia, 17.09.2013

those with allegations that the CNRP had misused grievances in Cambodia's population, in particular among the textile workers, to create a situation of chaos and insecurity. Some demonstrations had turned violent in September 2013 and January 2014 during which six citizens were killed by security forces and one person disappeared as later outlined in this report. A conglomerate of civil society organizations (CSO) including COMFREL condemned the violence.<sup>67</sup> The CNRP's leader, Mr. Sam Rainsy and Mr. Khem Sokha were alleged to be responsible for the demonstrations and the violent incidents and brought for hearings to the Phnom Penh municipality court, but were not charged.<sup>68</sup> Also some civil society organizations and trade unions were alleged by the RGC to have been supportive for the cause of the CNRP.<sup>69</sup> The strikes of trade unions and their members for higher wages led to death and injury of protesters due to the crackdown from the government. At least five civilians were shot dead and nearly 40 people injured and 23 others were arrested and detained in the worst violence against civilians. Violence began after crackdowns on striking workers and demonstrations by local security forces, police and military police officers. The authority forces put an end to CNRP supporters' long-standing occupation of Freedom Park. The recent decision by the Royal Government of Cambodia issue an indefinite ban on all future demonstrations, assemblies, or marches with more than 10 people and continue crackdowns on peaceful demonstrations and gathering. These government actions violated the Cambodian constitution and also disproportionate and violate the right to freedom of peaceful assembly despite protections provided for under Cambodian constitutional, domestic and international

The RGC saw itself under increasing security pressure since the number of participants in demonstrations had grown by the end of 2013 to up to 100.000 in the capital Phnom Penh and additional pressure was accumulating on the RGC with escalating labor protests in the textile sector at the same time. The Ministry of Defense was called to interfere into the political crisis appealing to the Royal Cambodian Army to defend the government of Prime Minister Hun Sen.<sup>70</sup> The CNRP had gone in the perception of the RGC too far with its demands for new elections or the resignation of Prime Minister Hun Sen. The CPP had re-elected Hun Sen following in the perception of the CPP constitutional procedures. King Norodom Sihamoni inaugurated the new National Assembly and approved the re-elected government under Prime Minister Hun Sen on 23<sup>rd</sup> September 2013.<sup>71</sup>

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<sup>67</sup> CSO: Joint Statement On Restoration of the Dawn of Democracy, Phnom Penh 04.01.2014

<sup>68</sup> Cambodia Daily: Opposition CNRP Leaders to Face Court Today, 14.01.2014

<sup>69</sup> Cambodia Daily: Ruling CPP Sees Threat in Civil Society Groups, 19.03.2014

<sup>70</sup> Cambodia Daily: Tea Banh Tells Armed Forces To Defend Government, 24.01.2014

<sup>71</sup> COMFREL: Final Report and Assessment of National Assembly Election 2013, December 2013

Allegations of CNRP have been according to the Constitutional Council rule that the constitution stipulates in Article 76, that at least 120 members of elected people representative are needed to form a new National Assembly what have led the CNRP to argue that their boycott of parliament does not allow the formation of a new National Assembly, because only 66 members of elected people representative of the CPP will be present not reaching the required quorum. The Constitutional Council decided however already in 2013 that endorsed the NEC's election result when 123 members of candidates are elected, even when elected candidates of the law makers decide not to participate in the inauguration ceremony of the new National Assembly as already outlined in this report.<sup>72</sup>

Similar boycotts of the National Assembly by the opposition after the parliamentary election 2003 and 2008 have not prevented the formation of a new National Assembly and proved to be an ineffective tool to pressure the CPP.<sup>73</sup> In return, the CNRP lost influence on the composition of the legislative as also observed after this election. Because of the parliamentary boycott the CNRP failed to be elected into any of the new nine parliamentary commissions and the new permanent committee of the National Assembly. The CNRP also failed to represent their constituencies in plenary sessions of the National Assembly where since the election 2013 ten laws were approved. With 55 seats in the National Assembly the opposition would in the fifth legislature also would have had a sufficient quorum of thirty seats to deliberate on a motion of censure against any member of the prime minister including the Council of Ministers according to an in March 2006 amended constitutional provision, Article 98, Chapter VII.<sup>74</sup>

After the formation of the new National Assembly the CNRP had no other option than to continue negotiations with the CPP over the electoral dispute. In February 2014 CNRP and CPP announced to have agreed to form an electoral reform commission.<sup>75</sup> The negotiations have however until the end of writing of this report brought no substantial results apart from announcements. The parliamentary boycott continued. Considering the preceding negotiations, which started in September 2013 and are lasting now already seven months, it is difficult to assess how far reaching the results of the negotiations between CNRP and CPP will be. Currently it looks like negotiations continue indefinitely but not substantial agreements will be achieved. The CNRP threatened in March 2014 new mass demonstrations.

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<sup>72</sup> See chapter 3.1 Power of the Legislative

<sup>73</sup> COMFREL Election Watch 2013/14

<sup>74</sup> COMFREL Parliamentary Watch 2013/14

<sup>75</sup> Voice of America(VOA): Cambodian Parties Agree to Form Electoral Reform Commission, 25.02.2014

#### 4.4 Political Negotiation and Electoral Reforms

The electoral dispute after the parliamentary elections and the following dispute over the formation of the new National Assembly and government revealed in 2013 that election reforms are urgently needed to ensure future elections will increase the confidence of all stakeholders involved in the electoral process. Government and opposition have agreed to conduct negotiations and consultations on reforms of the electoral process, although demands of the opposition to investigate election irregularities or conduct new elections were opposed by the new CPP led RGC.

Originally negotiations between the CPP and CNRP over the electoral dispute began first with a meeting with King Norodom Sihamoni on 14<sup>th</sup> September who had invited Sam Rainsy and Hun Sen for negotiations to end the political stalemate and pursue the CNRP to participate in the formation of the new National Assembly. After the meeting has been announced that Sam Rainsy and Hun Sen had reached a ‘mutual understanding but differences had not yet been resolved’<sup>76</sup>. The CNRP in the meantime continued demonstrations in Phnom Penh and announced to not participate in the inaugural ceremony of the National Assembly presided over by King Norodom Sihamoni when no investigations into election irregularities are launched. On 16<sup>th</sup> September after a new meeting between Hun Sen and Sam Rainsy has been announced that it was agreed to establish a mechanism between the two parties to implement electoral reforms but no agreement was reached to investigate election irregularities and to hold re-elections.<sup>77</sup>

Then series of negotiations between the senior lawmakers of both parties continued, but brought again no substantial results. The CNRP insisted on investigations of election irregularities and re-elections. The CPP insisted on the 16<sup>th</sup> September agreement for electoral reform but no investigations into electoral irregularities and re-elections.<sup>78</sup> The CNRP than is not interested in the negotiation claiming negotiations with the CPP can only continue under the condition that election irregularities are investigated. New CNRP demonstrations were launched in the capital Phnom Penh.<sup>79</sup> After labor strikes turned violent on 3<sup>rd</sup> January, the CNRP cancelled the scheduled negotiations. Only in February negotiations were resumed.

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<sup>76</sup> Radio Free Asia (RFA): Hun Sen, Sam Rainsy Make No Breakthrough in Talks to End Poll Dispute, 14.09.2013

<sup>77</sup> Radio Free Asia (RFA): Cambodia’s Ruling and Opposition Parties Agree to Pursue Electoral Reforms, 16.09.2013

<sup>78</sup> Phnom Penh Post: Opposition Tells CPP: Agree, or Talks Off, 06.11.2013

<sup>79</sup> Cambodia Daily: CNRP Says No Further Negotiations Without Investigation, 20.11.2013

Early 2014 were then announced that a fourteen items agenda was agreed on by CPP and CNRP to be considered for electoral reforms and negotiations will proceed. However no substantial agreements were achieved to end the parliamentary boycott of the CNRP. The fourteen items agenda publically announced to have been agreed on for further elaborations included reforms of the national election commission, the voter registration, the law on the financing of political parties, the role of nongovernmental organizations in elections, media coverage and political propaganda, the resolution of election disputes, election observers, the neutrality of civil servants and armed forces in elections and amendments to electoral laws and campaigning, village chief elections. Major issue of contention between CPP and CNRP however remained a reform of the NEC. The CPP so far refuses reforms of the NEC. The CNRP wants to set up a new NEC required to be approved by at least a two-third majority of the National Assembly.<sup>80</sup>

COMFREL, together with the situation room of Cambodian CSOs and the Electoral Reform Alliance (ERA) believes that electoral reforms should be based on a principle of check and balance between the two elected political parties. In order to ensure this, a reform council to lead and oversee the implementation of the reforms should be established with membership from the two winning political parties. Following reforms should positively influence the negotiations between opposition and government<sup>81</sup>:

*The National Assembly should elect members of the NEC with a two-third majority based on the recommendations of a Selecting Committee. Recruitment procedures for NEC should be transparent. NEC members must strictly follow the principles of impartiality, independence, integrity and professionalism, are obliged to resign from any political party position and prohibited to participate in political party activities. In addition NEC members must be prohibited by law not to become member of any political party until after two years of their resignation from a NEC position. The NEC should become a constitutional body. The constitution should be amended regulating NEC establishment procedures and composition. The composition and recruitment of election officials to the Provincial and Commune Election Commissions (PECs and CECs) and Polling Station Commissions (PCs) should be screened by a selecting committee including representatives from all political parties elected into the National Assembly and NEC. For members of PECs, CECs and PSCs the same regulations in regard to principles of strict impartiality, independence, integrity and professional should be applied than for NEC members. LEMNA should be amended accordingly.*

*The voter registration system should be fundamentally changed. There are two options: 1- the Voter registration and updating of voter lists should be changed completely too ease registration and ensure accuracy of the voters list, in par-*

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<sup>80</sup> Radio Free Asia: Cambodian Parties Agree on 14 Point Agenda for Electoral Reform Talks, 18.03.2014

<sup>81</sup> COMFREL: Final Report and Assessment of National Assembly Election 2013, December 2013

ticular improve the voter identity (add photo and ID card number) and issue voter cards. The government should make amendments to the law to ensure that National Identity Cards are issued for life time with unique ID number (People are encouraged to change their photos after using the identity for 20 years). All responsibility for voter registration should be transferred from the political and partisan commune councils to the NEC and respective electoral bodies only. 2- The creation of an automatic and electronic registration system for a valid civil registry or/and ID card data at a minimum of bureaucratic costs. The government of Cambodia must commit to such a plan and timeline by which to complete the civil registry and distribute national identification cards to all citizens. A comprehensive database of the voter list must be open for public review and audit.

An electoral dispute resolution mechanism should be established replacing the NEC. This could be a Commission for Electoral Justice (CEJ) on national, provincial and commune level to resolve electoral disputes and complaints. The National Assembly should elect members of the CEJ with a two-third majority based on the recommendations of a Selecting Committee as above NEC's selection procedure. Recruitment procedures for CEJ should be transparent. CEJ members must strictly follow the principles of impartiality, independence, integrity and professionalism, are obliged to resign from any political party position and prohibited to participate in political party activities. Members of the CEJ like NEC members must be prohibited to be member of any political party, to participate in political party activities and must be prohibited to become member of any political party until after two years of their resignation from their position.

An Independent Board of Directors for Media should be created to oversee and supervise media coverage and broadcasting in particular during the election period in state and private media. The board should be composed of media representatives, political party representatives elected into the National Assembly, the National Election Committee and representatives of civil society organizations. The independent board should ensure that state and private media comply with the principle of equal access to media during the official election campaign, defined as equal conditions to buy air-time in terms of costs and coverage for all political parties and comply with ethical and moral principles of professional journalism. Every elected political party or affiliated organizations and individuals should be able to receive a television and radio channel license when general license requirements are met. A law on broadcasting (TV and Radio) should be created.

A new law regulating campaign finance should be created, limiting campaign finance and requiring any political party to publicly reveal their campaign expenditures for every election. Enforcement of Laws should be strengthened to ensure that court officials, members of police and armed forces comply strictly with the principles of impartiality, independence and integrity in public functions. The enforcement of the Laws should prohibit officials to participate in election campaigns other than to fulfill their public functions regulating and securing campaigns. Village chiefs should be directly

*elected by citizens. The elections should be conducted by commune councilors. Village chief candidates should be non-partisan.*

#### **4.5 Prospects for Sub-National Council Elections 2014**

In May 2014 the third sub-national elections will be held for district, municipality and provincial councils. The elections are non-universal as only elected commune councilors are allowed to participate. Although the elections provide a degree of democratic oversight through elected commune councilors, they lack citizen's participation. COMFREL believes the election should be universal and independent candidates should be allowed. The elections of Municipality Councils, Provincial District Councils should be the direct election system like for the commune council election system that will be held on the same day. Considered should be also if not members of interest groups, like representatives of farmer associations are allowed to contest in sub-national elections.<sup>82</sup> In February 2014 the Youth Council of Cambodia (YCC) on behalf of total six youth associations launched a petition campaign demanding a change of the existing indirect election system to a direct election system. The CNRP announced to back the demand, whereas the CPP rejects a change of the system.<sup>83</sup>

Under the current system, the elections will most likely reconfirm the current seat distribution in the commune councils. As observed in past sub-national elections, commune councilors vote usually along their party line, choosing candidates of their own party. This makes sub-national elections more of an exercise of intra-party than inter-party competition. Based on the assumption that the commune councilors will vote along the party line, the CPP will clearly win the sub-national elections, obtaining about 2,500 seats. The CNRP will obtain about 770 seats; FUNCINPEC when supported by the National Party will obtain about 15 seats and the League for Democracy (LDP) about eight seats.<sup>84</sup> According to COMFREL's calculation the sub-national elections will lead most likely to following result as shown in Table 2 below:

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<sup>82</sup> COMFREL Election Watch 2014

<sup>83</sup> Phnom Penh Post: Youth Vote Pushes for Direct Council Election, 13.02.1014

<sup>84</sup> COMFREL Election Watch 2013/14

No	Party	Situation of Party	Projected Council Election Results											
			City /District Khan						Capital / Province					
			Ordinary		Mixing Case 1		Mixing Case 2		Ordinary		Mixing Case 1		Mixing Case 2	
			Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats
1	CPP	Standing as candidates	8292	2216	8292	2211	8292	2208	8292	305	8292	305	8292	305
2	Funcinpec Party	Standing as candidates	151	19	203	26	151	19	151	2	203	2	151	2
3	Nationalism Party	non- Standing as candidates	52	1			3007	690	52	0			3007	86
4	CNRP	Standing as candidates	2955	679	2955	679	2955	86	2955	86	2955	86	2955	86
5	League for Democratic Party	Standing as candidates	8	1	8	1	8	1	8	0	8	0	8	0
6	Democratic Republic Party	Standing as candidates	0	0	0	0	0	0	0	0	0	0	0	0
7	Khmer Nationality Party	non- Standing as candidates	1	0	1	0	1	0	1	0	1	0	1	0
<b>Voices and Seats receiving</b>			<b>11459</b>	<b>2916</b>	<b>11459</b>	<b>2917</b>	<b>11459</b>	<b>2918</b>	<b>11459</b>	<b>393</b>	<b>11459</b>	<b>393</b>	<b>11459</b>	<b>393</b>
<b>Total Voices and Seats</b>			<b>11459</b>	<b>2931</b>	<b>11459</b>	<b>2931</b>	<b>11459</b>	<b>2931</b>	<b>11459</b>	<b>393</b>	<b>11459</b>	<b>393</b>	<b>11459</b>	<b>393</b>
<b>The rest of seats</b>			<b>0</b>	<b>15</b>	<b>0</b>	<b>14</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

On the other hand has to be acknowledged that is possible, though very unlikely that commune councilors chose candidates of other parties than their own. This provides a line of democratic oversight. Also political parties can register for the elections who have not gained seats in the preceding commune council elections. In this election one minor political party, the Republican Democratic Party (RDP) will contest despite having failed to win any commune councilor seat in the commune election 2012. Notable in this regard is that the CPP Central Committee decided three months ahead of the sub-national election, in February 2014, to make payouts of 125USD per person to all its sitting commune councilors. This indicates that the payouts might have been made to ensure party discipline in order to prevent possible vote gains for the opposition after the electoral defeat in the parliamentary election 2013.<sup>85</sup> Unfortunately, it remains common practice during elections to provide material incentives to voters. Current laws do not prohibit this practice as long it is not made during official election campaigns.<sup>86</sup>

The official election campaign for the sub-national elections will be held between 2<sup>nd</sup> and 16<sup>th</sup> May. The election will be held on 18<sup>th</sup> May 2014. Six parties have registered of which only one political party (RDP) had not won seats in the commune council in the past commune election in 2012. The main contenders for the sub-national elections are the CPP and CNRP. The CPP won in the last commune elections 8,292 commune councilor seats. The SRP and HRP won together 2,955 commune councilor seats (2,155/800) before founding the new opposition party CNRP, who SRP and HRP will support in this sub-national election in order to provide the CNRP local representation. Other political parties who will contest are the FUNCINPEC, the League for Democracy Party (LDP) and the Cambodian Nationality Party (CNP). FUNCINPEC had gained 151 councilor seats in the past commune election and will be supported by the Nationalist Party (successor of the Norodom Ranariddh Party) who won 52 councilor seats. LDP gained eight and CNP one commune councilor seat in the past commune election.<sup>87</sup> Total 3,324 councilor seats for district, municipal and provincial councils will be indirectly elected. More seats will be contested in this election after the province Kampong Cham has been divided into two provinces in December 2013 by royal decree initiated by the newly formed government of Prime Minister Hun Sen, adding one new province named Tbong Khmum to the 24 provinces and municipalities.<sup>88</sup>

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<sup>85</sup> Phnom Penh Post: Councilors to Get Payouts Before Vote in Upcoming Elections, 20.02.2014

<sup>86</sup> COMFREL Election Watch 2014

<sup>87</sup> COMFREL: Final Report and Assessment on Commune Council Election 2012, Phnom Penh October 2012

<sup>88</sup> Cambodian Daily: NEC Calls for Council Election Candidates, 12.02.2014

## V. Democratic Participation

The year 2013 contrary to the previous year was marked by a widespread politicization of the Cambodian public ahead of the parliamentary elections, during the period of the post-electoral dispute and the following dispute over the formation of the new National Assembly and new government. The politicization of parts of Cambodia's public observed in 2013 allows a cautious optimism in regard to changes in Cambodia's political culture towards a more participative, pro-active and open political culture in which in particular youth and women participation seem to have gained momentum. COMFREL observed an increase in women and youth participation during the campaign, elections and during demonstrations, marches and protests after the elections. COMFREL found women participated in the election campaign an average of 30% to 50%. More women than men voted in the National Assembly election 2013. Of the 9,675,453 total registered voters 5,081,843 voters were women, accounting for 52.52% of all registered votes. Between 5,000 to 20,000 young voters actively engaged in campaigning for the two main political parties. More young voters in 2013 applied to be election observers. COMFREL facilitated the registration of 11,764 observers (female 38% and youth 65%).<sup>89</sup> Among those were 38% women and 65% youth. Estimated 1.5 million youth between 18 and 30 years voted in 2013 for the first time.<sup>90</sup>

A new mean of political participation in 2013 are social media. In particular for youth voters social media seem to play an increasingly important role to get political information and express political opinions. According to the Cambodian Ministry of Posts and Telecommunication latest reported statistics in December 2012, Cambodia counts 2.7 million Internet users, with 27 ISPs serving a population of 14.5 million. At 19.1 million, there are more SIM cards in Cambodia than people. Internet World Stats.com reported for Cambodia 742,220 Internet users as of Dec 31, 2012. Facebook has an estimated 740,000 accounts originating in Cambodia.<sup>91</sup> In 2013 at least partly the new digital media counterbalanced other media broadcasts, in particular radio and television. Those remain to this day the main means of political communication for Cambodia's population but continue to be dominated and controlled by the CPP led RGC. This leaves the opposition and other political and civic activists' only access to a few alternative radio stations. Coverage of other political parties than the CPP is only guaranteed through state TV and radio equity programs during official election campaigns. Demands for more independent media continue nonetheless to remain unheard by the CPP led RGC. The RGC continues to ensure CPP control of

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<sup>89</sup> COMFREL: Final Report and Assessment of National Assembly Election 2013, December 2013

<sup>90</sup> COMFREL: Report - The Empowerment of Women in Politics and the Fifth Legislature National Assembly Elections 2013, November 2013

<sup>91</sup> COMFREL Media Monitoring 2013

all media through the Ministry of Information.<sup>92</sup> Only the internet is free, but RGC scrutiny has been increasing in past years. The RGC has made attempts to block government critical blocs. Some internet providers were asked to shut down such blocs. The RGC however refrained from further attempts of censorship after media and some civil society activists had reported about possible internet censorship.<sup>93</sup>

A lack of equitable access to media has forced opposition parties and other civic and political activists to shift political participation to streets and other public places. Demonstrations, marches and protests are currently the dominant means to communicate to the Cambodian public alternate opinions, views and information. Though widely ignored by the RGC controlled mainstream media, demonstrations and protests appeared as an effective tool in 2013 to express other opinions, views, disseminate alternate information and express grievances and discontent with current RGC policies. The opposition represented mainly by CNRP was capable to mobilize citizens in increasing numbers the more often demonstrations were held in the period from September to December 2013. Demonstrations were held mainly in Phnom Penh at an assigned area called 'Freedom Park', but spread throughout the capital with marches organized by CNRP, civil society associations, monks, individual citizens and labor unions.<sup>94</sup>

Largest demonstrations at the Freedom Park were observed by COMFREL on 26<sup>th</sup> August with 10,000 participants, on 1<sup>st</sup>, 4<sup>th</sup> and 7<sup>th</sup> September followed by mass protests of more than 10,000 on 15<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> September. On 21<sup>st</sup> September a petition with 200,000 signatures was delivered to King Norodom Sihamoni demanding a delay of the formation of the new National Assembly scheduled for 23<sup>rd</sup> September. This followed new mass demonstrations on 6<sup>th</sup> October by the CNRP, a gathering at Freedom Park on 13<sup>th</sup> October of the Independent Cambodian Teacher Association and new CNRP demonstrations under attendance of 10,000 participants at Freedom Park, when petitions to contest the election results were delivered to foreign embassies. In November followed labor protests and a march of monks through provinces along main national roads delivering the message 'Have Justice have Peace' and further CNRP mass demonstrations in December. By the end of 2013 demonstration and marches mobilized up to 100,000 citizens. The Cambodian public, who is critical of the RGC and its policies gained public momentum by the end of the year 2013.<sup>95</sup>

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<sup>92</sup> COMFREL: Final Report and Assessment of National Assembly Election 2013, December 2013

<sup>93</sup> CCHR: Freedom of Expression and Internet Censorship in Cambodia, April 2013

<sup>94</sup> COMFREL Election Watch 2013/14

<sup>95</sup> COMFREL Election Watch 2013/14

Unfortunately this positive development towards a more informed, pro-active and critical Cambodian public also raised security concerns and antagonized 3,2 million voters who were supportive of the CPP during the parliamentary elections 2013. Positively the CPP refrained from counterdemonstrations against the CNRP. However some opposition supporters, land and labor protesters provoked security forces and some turned violent. Even though most demonstrations and land and labor protests in 2013 were peaceful, incidents of violent clashes with the security apparatus during some protests including threats against Cambodian Vietnamese, the destruction of property and constraints on the freedom of movement and day-to-day business occurred.<sup>96</sup> Even though the CNRP repeatedly distanced itself from the violence, the CPP led RGC found a pretext and justification to repress the demonstrations. By the end of 2013, beginning months of 2014 the CPP led RGC used its security apparatus excessively including police forces, special military forces and the military police to signal Cambodia's public to no longer tolerate the public display of discontent and grievances towards the CPP led RGC.

Excessive use of force including the use of live ammunition against protesters, severe beatings, arrests and the lethal shooting of one demonstrator in September 2013, one by-stander in November 2013 and four workers and the disappearance of one protester in January 2014 signaled an abrupt and repressive end to CNRP demonstrations and labor protests. The repressions backlashed on the CPP led RGC who was widely criticized by international media, national and international human rights organizations, the United Nations and a number of governments including the governments of the EU, USA and Japan.<sup>97</sup> The repressions of demonstrations by the RGC had severely restricted civic freedoms in the first months of 2014 and created an atmosphere of intimidation and fear among 2.9 million citizens who had voted for the CNRP in 2013 and among government critical labor union and civil society organizations.

## **5.1 Freedom of Peaceful Assembly**

Even though it appears like the CPP led RGC ensured first the freedom of peaceful assembly throughout the year 2013 by tolerating demonstrations, marches and protests, a number of CNRP demonstrations, and in particular land and labor protests, were repressed in 2013 followed by a deadly crackdown of the freedom of assembly in January 2014. The CPP led RGC continues to lack the political commitment to ensure the freedom of peaceful assembly is protected continuing a trend already observed in

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<sup>96</sup> Phnom Penh Post: Protest Takes Dark Turn, 16.09.2013; Cambodia Daily: Vietnamese Shop Near Protest Site Looted by Demonstrators, 06.01.2014; BBC: Cambodian Garment Workers Killed in Clashes With Police, 03.01.2014; Al Jazeera: Cambodian Protests Unmask Anti-Vietnam Views, 24.01.2014; Cambodia Daily: One Dead, Severely Injured as CNRP Supporters, Police Clash, 16.09.2013

<sup>97</sup> Voice of America (VOA): International Community Criticize Human Rights in Cambodia, 28.01.2014

previous years. The RGC also continued to tolerate the widely criticized use of excessive force by the security apparatus despite being obliged by Cambodian and international law to protect basic human rights and constrain security forces from the use of excessive force other than in cases of self-defense.

Alone the Cambodian Center for Human Rights (CCHR) reported in 2013 to have gathered total 25 cases during protests in which the RGC security forces was involved in beatings, shootings and the killing of two persons during demonstrations. CCHR has found twelve separate workers demonstrations that were met with violence and nine cases of land protests and four cases of CNRP protests which were countered by the security apparatus with excessive use of force. COMFREL observed between July 2013 and February 2014 total 74 demonstrations and marches by the CNRP. Of those demonstrations 18 were repressed. Total 80 persons were arrested.<sup>98</sup> Cases of excessive use of force by the security apparatus documented by CCHR included the use of electric batons by the military police against workers protesting at the Sabrina Garment factory in Kampong Speu province on 27<sup>th</sup> May. At least 50 people were injured with one worker being beaten unconscious and two women suffering miscarriages as a result of their injuries. Another case was reported for the SL Garment Processing factory, located in Meanchey District, Phnom Penh where over a number of months, a series of strikes culminated on 12<sup>th</sup> November 2013 when security forces violently disbanded protesters by severely beating with batons, discharging live ammunition, rubber bullets and tear gas canisters. A 49-year-old street vendor, Ms. Eng Sokhom, who was an involved bystander was shot and pronounced dead on arrival at the hospital. Nine protestors were wounded by security gunfire, one of whom is paralyzed for life. During land protests of the Boeng Kak Lake community on 14<sup>th</sup> March one man lost three teeth as he was purchased and dragged along the street by security forces, another women's arm was broken. At a land protest on 1<sup>st</sup> July, a woman miscarried after being kicked in the stomach by security forces. On 22<sup>nd</sup> September ten people were injured at a peaceful candle light vigil at Wat Phnom. During the incident two elderly women were hospitalized and a number of journalists and human rights workers chased by the police.<sup>99</sup>

On 31 October 2013, clashes between villagers and security guards in Phnom Penh injured three people including a 14-year-old girl and a man who was repeatedly kicked whilst on the ground before being arrested. On 15<sup>th</sup> September 2013, clashes broke out in Phnom Penh between security forces and CNRP demonstrators. Violence erupted around Sisowath Quay between dozens of stone-throwing youths and hundreds of military police and riot police armed with guns, rubber bullets, tear gas, smoke grenades and

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<sup>98</sup> COMFREL Election Watch 2013/14

<sup>99</sup> CCHR: Excessive Use of Force Against Demonstrators in Cambodia in 2013, 03.01.2014

water cannons. Throughout the day and late into the night, several clashes occurred in Phnom Penh, leaving residents and workers trapped in the middle. During one clash at the Kbal Thnal overpass, some five kilometers from the scene of clashes at Sisowath Quay, security forces discharged live ammunition, severely wounding at least nine and killing a bystander who was attempting to return home from his work. The police also beat several people during the course of the day. On 18<sup>th</sup> October 2013, when a large group gathered at Wat Phnom calling for an investigation into the death of Mao Sok Chan who was killed, demonstrators were dispersed by security forces with baton beatings injuring five.<sup>100</sup>

The documented cases by CCHR and other human rights organizations not listed here including ADHOC and LICADHO demonstrate that no efforts were made by the RGC in 2013 to discipline the security apparatus and ensure security personnel comply fully with current laws protecting citizens from the use of excessive use of force. Basic human rights had been repeatedly violated including the right to live and the freedom from torture, cruel, inhuman or degrading treatment and punishment. The disproportional use of excessive force by the security apparatus was then again repeated in January 2014 when a severe and deadly crackdown on labor protests and on demonstrations of CNRP followed. First labor union protests were severely repressed between 2<sup>nd</sup> and 3<sup>rd</sup> of January 2014. Special military forces known as the ‘Military Special Command Unit 911’ were deployed to the US/Korean owned Yak Jin factory in Phnom Penh’s Pursenchey district. Ten protesters were arrested. Some protesters were severely beaten and arrested. In Veng Sreng road in Phnom Penh at the same day these special military forces, military police and regular police forces dispersed peaceful striking workers by baton beating.<sup>101</sup>

The next day security forces shoot and killed four people, 38 people were taken to hospitals and thirteen protesters arrested. Thirteen arrested workers were brought to unknown places by security forces for five days before the RGC finally after public pressure had to reveal their whereabouts. The workers had been detained in a correctional center in the province of Kampong Cham known to be one of the harshest prisons in Cambodia. Cambodia’s correctional centers are repeatedly criticized for human rights violations including torture of prisoners.<sup>102</sup> Of particular concern is a report by LICADHO that one 16-year old boy went missing during the labor protest after been shot in the chest and carried away by security forces.<sup>103</sup> On 23<sup>rd</sup> March 54 civil society organizations including COMFREL released a public letter

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<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> UN News Centre: UN Anti-Torture Group Urges Cambodia To Create An Independent Body to Monitor Prisons, 16.12.2013

<sup>103</sup> LICADHO: Summary Paper - When Freedom Meets Oppression: Timeline of Recent Events, 31.01.2014

urging the RGC to investigate the disappearance of the boy who is now missing for three months. Security forces claimed to have investigated but did not know his whereabouts. The parents of the youth believe he is dead. Civil society organizations fear he became a victim of forceful disappearance.<sup>104</sup>

The severely violent and deadly crackdown on labor protest followed on 4<sup>th</sup> January a ban on all forms of gatherings, marches and demonstrations of more than ten people in Phnom Penh. The Ministry of Interior released a statement declaring that all protests and public assembly are banned temporarily 'until security and public order are secured and returned to normal'<sup>105</sup>. The directive was rigorously enforced by the security apparatus bringing demonstrations and marches to a standstill after 4<sup>th</sup> January 2014. A severe crackdown followed by security forces on CNRP demonstrations at Freedom Park.<sup>106</sup>

The next day police arrested five land-right activists of the Boeung Kak Lake commune who had prepared to peacefully protest for the release of human rights defenders. Police released the five in the late afternoon after they signed a form promising that they will not protest again until the ban on peaceful public assemblies is lifted.<sup>107</sup> A labor union gathering scheduled for March 2014 was prevented by security forces to gather at Freedom Park.<sup>108</sup> Other announced labor protests were vehemently repressed and total 54 protesters arrested. The ban of the freedom of assembly was also rigorously enforced against civil society organizations suspected by the RGC to be affiliated to the opposition. COMFREL found that total eight of 21 gatherings of civil society activists were prevented. During the crackdown 18 people were temporarily arrested. A planned demonstration of the popular radio moderator Mom Sonando on 18<sup>th</sup> January was dispersed by security forces using batons and tear gas leaving protesters injured and two arrested.<sup>109</sup> Numerous images of excessive use of force against citizens by the RGC security apparatus throughout 2013 and 2014 were broadcasted through internet including social media, reported and observed by eyewitnesses and investigated by national and international human rights organizations.<sup>110</sup>

The disturbing images have undermined confidence in the RGC security apparatus, in particular among those citizens not supportive or critical of the CPP led RGC. The ban on the right for freedom of

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<sup>104</sup> 54 CSOs: Public Letter Urging an Immediate Investigation into the Disappearance of Khem Sopath, 23.01.2014

<sup>105</sup> Agency Kampuchea Press: Senior Government Official: CNRP Has To Be Responsible of Recent Violence, 04.01.2013

<sup>106</sup> Phnom Penh Post: Military Police Storm Freedom Park, 04.01.2014

<sup>107</sup> LICADHO: Summary Paper - When Freedom Meets Oppression: Timeline of Recent Events, 31.01.2014

<sup>108</sup> Phnom Penh Post: After Blockade, Unions Plot Next Move, 10.03.2014

<sup>109</sup> Cambodian Center for Independent Media (CCIM): Government Crack Down on Sonando Rally An Attack on Free Expression, 18.01.2014

<sup>110</sup> CCHR: Excessive Use of Force Against Demonstrators in Cambodia, 03.01.2014; LICADHO: Summary Paper - When Freedom Meets Oppression: Timeline of Recent Events, 31.01.2014

peaceful assembly, declared temporary on 4<sup>th</sup> January remained in place by the end of the writing of this report in April 2014. Despite announcements to the contrary of Prime Minister Hun Sen, who declared on 25<sup>th</sup> February to lift the ban accompanied by an announcement that CPP supporters will be allowed to hold counter-demonstrations should the CNRP begin with new demonstrations, the ban on the freedom of peaceful assembly was not lifted. Attempts by labor unions and some civil society activists continued to be repressed by the security apparatus until the end of the writing of this report.<sup>111</sup>

Following and ongoing investigations by the RGC into the killings of six citizens, the disappearance of one citizen and the disproportionate use of physical violence injuring dozens of citizens by the security apparatus seem currently to concentrate less on the security forces itself but on the protesters who were in past months repeatedly and randomly accused by the RGC to have instigated the violence. No arrests other than of protestors were made. In February 2014 three protesters were prosecuted for three year prison terms ‘causing intentional violence and damage to public property’, two years of the jail sentence were suspended.<sup>112</sup> 23 protesters remain in jail awaiting prosecution as of April 2014. Human Rights Organizations and media reported about mistreatment and torture of some of arrested protesters.<sup>113</sup> None of the security forces had been held so far accountable for the violent incidents.<sup>114</sup> The public remained ill-informed until April 2014 about investigations to clarify the circumstances of the violent incidents, in particular the death of six citizens.<sup>115</sup>

## 5.2 Freedom of Expression and Information

Current legal provisions and political practices by the RGC in 2013 have continued to fail to ensure freedom of expression and information. The RGC seem to lack the political will to improve policies to ensure freedom of expression and information. While freedom of expression and information has gradually increased over the past decade through a few independent radio stations, the internet and some print media, the shortcomings in RGC policies to ensure freedom of expression and information remained also in 2013 still extensive. Among those shortcomings is of major concern that all media with nationwide coverage are dominated and controlled by the CPP. This discourages the development of an

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<sup>111</sup> Cambodian Daily: Hun Sen Lifts Protest Ban, Warns of Pro-CPP Rallies, 26.02.2014 and Obfuscation Reigns Over Ban on Demonstrations, 06.03.2014

<sup>112</sup> Xinhua News Agency: Cambodian Court Sentences Protesters To Three Year in Jail, with 2 Years suspended, 28.02.2014

<sup>113</sup> Human Rights Watch: Cambodia Universal Periodic Review 2013, January 2014; Radio Free Asia: Four Shot Dead As Cambodian Police Open Fire on Worker’s Protests, 03.01.2014; Cambodia Daily: Twenty-Three Arrested Protesters Held in Kampong Cham Prison, 09.01.2014

<sup>114</sup> Cambodian Daily:

<sup>115</sup> Agency Kampuchea Press: Senior Government Official: CNRP Has To Be Responsible of Recent Violence, 04.01.2013; Phnom Penh Post: Minister Says CNRP Protests ‘Crossed Line’, 27.02.2014

open and plural political discourse and an informed Cambodian public opinion. The demonstrations in 2013 displayed that the Cambodian public lacks other means of expressing their opinions, views and of gaining access to independent information. Illustrative for the CPP media dominance in 2013 was that all mainstream media limited their coverage of protests and demonstrations, leaving the public ill-informed about the electoral dispute and the dispute over the formation of a new National Assembly.<sup>116</sup>

Whereas COMFREL positively observed in 2013 that the state owned television and radio stations have improved their broadcasts in terms of balanced coverage of political parties and unbiased reporting, at least during the official campaign period, this cannot be observed for other main media. Significant remain that only the government party CPP controls since fifteen years all private television stations and ensured in this way a constantly positive coverage of its activities in all TV stations including the dissemination of selected information, views and opinions in favor of the CPP led government. In 2013, COMFREL found that all eleven TV stations/cables and more than 100 radio stations are either owned by the ruling 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. Only six of total fourteen radio stations were identified to be independent operating within Cambodia. Those included the Women Media Center (FM 102), Radio Beehive (FM 105) and Voice of Democracy (FM 106.5) with coverage only in the capital Phnom Penh and surrounding areas, and the foreign owned nationwide radio broadcasters Radio Free Asia (RFA), Voice of America (VOA) and Radio France International (RFI).<sup>117</sup>

The CPP had clearly a distinctive advantage in all election campaigns since 1998 as observed in all previous national and commune elections, but also in election free periods. Other information, views and opinions than the official government line go in mainstream media widely unreported.<sup>118</sup> The RGC often rebut this criticism by referring to the few independent local and foreign media broadcasters to operate freely in Cambodia and in this way beside internet and social media provide enough space for alternate opinion and information.<sup>119</sup> The majority of Cambodia's population however relies on nationwide TV and radio broadcasts, especially in rural areas and those are widely controlled by the RGC.<sup>120</sup>

To this day, no law has been adopted and effectively implemented to ensure that all local media have access to governmental information allowing them to disseminate accurate information, report about

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<sup>116</sup> COMFREL Media Monitoring 2013

<sup>117</sup> COMFREL Media Monitoring 2013/14

<sup>118</sup> Ibid.

<sup>119</sup> Cambodia Daily: Press Freedom Ranking Drops Again in 2014, 13.02.2014

<sup>120</sup> COMFREL Media Monitoring 2013/14, see previous annual reports 'Democracy, Election and Reform' 2012-13

political activities and public policies and to contribute to a plural and open political discourse. Positive only as earlier outlined in this report, the Royal Government of Cambodia formally acknowledges the need for a Freedom of Information Law, 'in order to create a transparent government, reduce corruption and promote confidence in the government by the citizens of Cambodia'. On 8<sup>th</sup> November, the Ministry of Information was assigned to take lead of the drafting process. The Minister of Information confirmed that his ministry will need three years and more than one million USD to create this law.<sup>121</sup>

Journalists continued in 2013 to be under pressure to refrain from government critical reporting because of fear of reprisals in form of defamation law suits often applied to silence criticism in past years.<sup>122</sup> Self-censorship among journalists remains common and the few independent or opposition affiliated local radio stations experience constraints. In June 2013 the Ministry of Information banned Khmer-language programs from foreign based broadcasters disseminated through the two local radio stations including broadcasts of Voice of America (VOA), Radio Free Asia (RFA) and Radio France International (RFI). Only under public pressure the directive was withdrawn and the ban lifted the same month. During CNRP demonstrations and labor protests, journalists were often harassed by security forces, although no journalists were arrested. For the past twenty years eleven journalists have been killed and none of the perpetrators brought to justice. In the World Press Freedom Index 2013 released by Reporters without Borders, Cambodia further fell from place 143 to 144 of total 180 states ranked.<sup>123</sup>

Pressure on the RGC has increased from civil society and opposition to provide TV licenses to CNRP and independent radio broadcasters. Requests were made by the CNRP and by the popular radio moderator Mom Sonando, radio Beehive to receive TV licenses. Both attempts were blocked by the Ministry of Information in 2013 claiming that no frequencies for new TV stations are available despite that those requests have been made repeatedly over the past decade and new TV licenses have been issued in 2011.<sup>124</sup> Though it is questionable if the distribution of TV licenses to the CNRP will contribute to a more open and democratic political discourse, considering the conduct of an anti-vietnamese campaign by CNRP during the parliamentary elections 2013 and should the CNRP not refrain from continuing such campaigns. The demands illustrate that media reforms are urgently needed to ensure more equitable media access, in particular to TV stations for independent civil society organizations and opposition parties. Current restrictions on media can be understood as restrictions on freedom of expression and

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<sup>121</sup> See chapter 'Executive Transparency', COMFREL Government Watch 2013

<sup>122</sup> CCHR: Briefing Note on Media Regulation and Freedom of Expression in Cambodia, 13.02.2014

<sup>123</sup> Reporters Without Borders: World Press Freedom Index 2014, www.rsf.org

<sup>124</sup> Cambodia Daily: Kanharith Reiterates No TV Station for Broadcaster Sonando, 27.02.2014

information contrary to constitutional provisions guaranteeing these essential civic rights for all Cambodian citizens.

### 5.3 Political Discourses

Political discourses among political stakeholders and the Cambodian public in 2013 continued to be overshadowed by the historical legacy of the civil wars, the totalitarian rule of the Khmer Rouge and past injustices in the first two decades of the peace-building process. Political discourses followed patterns observed in the past which can be characterized as a political discourse of allegation, incitement, disinformation and defamation of political contrahents. The discourses contributed to an atmosphere of intimidation, distrust, suspicion, intolerance and anger among political contrahents and the Cambodian public contradicting a democratic discourse based on tolerance, non-violence and mutual respect.

In particular the CNRP and CPP leadership, Sam Rainsy, Kem Sokha and Hun Sen dominated the political discourse throughout 2013 mirroring the historical legacy. They represent a war generation split between the political forces opposing the Vietnam backed government of Heng Samrin and later Hun Sen, and the political forces backing these governments in the 1980s. Prime Minister Hun Sen, who came to power in 1985, represents the war generation claiming to have liberated Cambodia from the totalitarian rule of the Khmer Rouge Regime in 1979. Sam Rainsy and Kem Sokha represent the war generation, who claim to have been the last stronghold against the Khmer Rouge under the Lon Nol regime in the 1970s and fought a war of liberation from the Vietnamese occupation of Cambodia in the 1980s.

Kem Sokha was a member of the oppositional Buddhist Liberal Democratic Party (BLDP) from 1992 to 1995, a successor party of the pro-Lon Nol 'Khmer People's National Liberation Front' (KPNLF) opposing the CPP in Phnom Penh. He later joined FUNCINPEC, but left the party in 2002 claiming that 'FUNCINPEC had not lived up to the ideals of Son Sann, the charismatic leader of the 1980s pro Lon Nol republican KPNLF'<sup>125</sup>. During the 1980s the KPNLF was led by Son Sann and a former Lon Nol general named Dien Del who made their party known for a fierce anti-vietnamese nationalism as illustrated in one propaganda slogan of KPNLF in 1986: *'Will all the Khmer children at home are satisfied with bowing before the Vietnamese deciding of the fate of Cambodia? And will all the Khmer children be satisfied to stand with*

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<sup>125</sup> Kem Sokha cited in Cambodia Daily: Key Funcinpec Official Leave Politics for NGO, 10.10.2002

*their hands folded looking afar at a Cambodia of tragedy and grief under the violent, savage, ferocious and genocidal occupation of Vietnamese?*<sup>126</sup> Kem Sokha had supported the KPLNF during the 1980s. On 5<sup>th</sup> March Kem Sokha joined with other CNRP members the 35<sup>th</sup> anniversary of the KPLNF in Kandal province.<sup>127</sup>

Sam Rainsy was a FUNCINPEC member since 1981, but was expelled from the party in 1993. FUNCINPEC represented by former King Norodom Sihanouk and his son Prince Norodom Ranariddh had widely reconciled in the past two decades their differences over the past civil war and the military clashes in 1997 with the CPP. FUNCINPEC had been in alliance with KPNLF during the 1980s.<sup>128</sup> The CNRP leadership in contrary represents a war generation who failed to reconcile their differences with the CPP. Both, Kem Sokha and Sam Rainsy have been victims of grenade attacks in 1995 and 1997 for which no one has been held accountable.<sup>129</sup> Both come from a war generation of fierce anti-vietnamese nationalists and Lon Nol supporters in the 1970s and 1980s. The successor party of the KPNLF, the BLDP split in 1995, some faction under Ieng Mouly aligned with the CPP, the Son Sann faction allied with the opposition alliance named ‘National United Front’, which included the SRP.<sup>130</sup>

In 2013 this historical legacy of the past civil war and the first difficult decade of peace-building became evident in the political discourses of CPP and CNRP. War rhetoric had been exposed by Sam Rainsy and Hun Sen during the election campaign. As earlier outlined in this report, Sam Rainsy claimed on 10<sup>th</sup> June 2013, after the expulsion of opposition lawmakers from the National Assembly, that a situation of civil war was created. Hun Sen warned of a civil war and war with Vietnam should the CNRP win the national election one day after Sam Rainsy’s statement.<sup>131</sup> Likewise the CNRP conducted a fierce anti-vietnamese nationalistic election campaign with the aim to degrade the current government under Prime Minister Hun Sen still widely seen by hardliner opposition supporters as a ‘puppet regime’ of Vietnam. Sam Rainsy expressed his opposition to the CPP led RGC in following words during an election campaign In July 2013 in Siem Reap: ‘We are full. We have been eating Vietnamese sour soup for 30 years. This time we need to eat a traditional Khmer Soup.’<sup>132</sup> He further claimed that land has been mainly lost

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<sup>126</sup> Khmer Buddhist Association of the Republican Fraction Son Sann: Buddhism and the Future of Cambodia Khmer Buddhist Research Center, Rithisen 1986. S. 105

<sup>127</sup> Cambodia Daily: Former KPLNF celebrate 35<sup>th</sup> Anniversary, 06.03.2014

<sup>128</sup> Phnom Penh Post: 1997 Coup Now a ‘Bad Dream’, 06.07.2001

<sup>129</sup> Inter-Parliamentary Union: 166<sup>th</sup> Council Resolution, 06.05.2000

<sup>130</sup> International Crisis Group (ICG): Cambodia’s Election Turn Sour, Cambodia Report No. 3, 10.09.1998; COMFREL: Final Report - 1998 National Assembly Election Cambodia, February 1999

<sup>131</sup> See citations of Sam Rainsy and Hun Sen on page 22 (footnote 57,58)

<sup>132</sup> Cited from Cambodia Daily: Kem Sokha, Sam Rainsy Draw Large Crowds in Siem Reap, 25.07.2013

to Vietnamese companies and illegal immigrants from Vietnam and promised: ‘We have to kick the Vietnamese out and will collect our property back’<sup>133</sup>. Similar anti-vietnamese campaigns were conducted in other parts of the country during the official and unofficial election campaign. On Election Day incidents of anti-vietnamese violence were reported for the capital Phnom Penh.<sup>134</sup> The executive director of the Cambodian Center for Human Rights (CCHR), Ou Virak received death threats by opposition supporters for criticizing the anti-vietnamese campaign. International human rights organizations issued a petition pressuring Sam Rainsy and the RGC to publicly condemn and investigate the death threats.<sup>135</sup>

Other instances of anti-vietnamese nationalism were reported in May 2013. The former president of the HRP and now vice-president of the CNRP, Kem Sokha has been alleged to have claimed in public speeches in the provinces of Takeo and Prey Veng province on 18<sup>th</sup> May that the notorious Khmer Rouge security prison Tuol Sleng, also known as S-21 in Phnom Penh, had been fabricated by Vietnam to justify its occupation of Cambodia.<sup>136</sup> In reaction survivors of Tuol Sleng have staged protests against Khem Sokha supported by the CPP, first demanding an official apology of Khem Sokha and later threatening to sue him in court. The CPP led RGC hastily proposed a law to the National Assembly prosecuting individuals who deny crimes committed by the Khmer Rouge. The law was approved within only one week on 7<sup>th</sup> June.<sup>137</sup> The CNRP alleged that the accusations were fabricated to discredit the opposition in the election campaign ahead of the parliamentary election in July 2013. The CNRP claimed Khem Sokha had been misread, that he had not denied crimes committed by the Khmer Rouge and that he had lost himself his father under the Khmer Rouge. COMFREL observed that the CPP support for protests against Khem Sokha by Khmer Rouge victims and negative broadcasts by state and private television and radio stations dominated by the CPP, had stoked nationwide resentments of Kem Sokha, creating an insecure campaign environment for the CNRP after the allegations.<sup>138</sup>

The CPP on the other hand displayed the historical legacy of the civil war and the totalitarian rule of the Khmer Rouge on 7<sup>th</sup> January, officially named the ‘Victory Day over Genocide’, when Cambodia was liberated from the Khmer Rouge Regime on that day in 1979. The celebrations were held in CPP headquarters under attendance of hundreds of high ranking CPP members in midst of the ongoing dispute over the election results and the dispute over the formation of a new National Assembly and govern-

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<sup>133</sup> Ibid.

<sup>134</sup> COMFREL: Final Report and Assessment of National Assembly Election 2013, December 2013

<sup>135</sup> Cambodia Daily: Group Condemns Threats Against Leader of NGO, 10.01.2014

<sup>136</sup> Cambodia Daily: Kem Sokha Says S-21 Was Vietnamese Conspiracy, 27.05.2013

<sup>137</sup> Phnom Penh Post: Without Debate, Assembly Passes Heavily Criticized Denial Law, 07.06.2013

<sup>138</sup> COMFREL: Final Report and Assessment of National Assembly Election 2013, December 2013

ment, and just three days after the violent crackdown of labor protests and CNRP demonstrations. The CPP leadership including Heng Samrin, Chea Sim and Hun Sen were appraised during the celebrations for their role in toppling the Khmer Rouge with military and political support of Vietnam.<sup>139</sup> During the 35<sup>th</sup> anniversary no words were lost on the deadly crackdown on demonstrators, though the RGC regretted the deaths in meetings a day before with the diplomatic corps through Sar Kheng, the Minister of Interior. However no public apology or regret of the RGC came to be known other than appraisals of the security forces to have properly handled the demonstrations.<sup>140</sup> This led the CNRP to claim that the crackdown had been ordered to ensure that the CPP anniversary celebrations are not disturbed. CNRP supporters in contrary to the CPP remember the 7<sup>th</sup> January as a day of occupation by Vietnam.<sup>141</sup>

## VI. Recommendations

The 20<sup>th</sup> anniversary of the peace process and democratization process ended with a political stalemate and a sincere electoral dispute reflecting the historical legacies of the past civil wars. Any progress in the stalled democratisation process depends on improvements of the political relations between CNRP and CPP. As long the two main political contrahents are not able to reconcile their political conflict it is not visible how genuine political reforms can be achieved to foster the democratization process. The political developments in 2013 demonstrate that the legislative and judiciary are paralyzed by the current political developments allowing the executive to dominate Cambodia's political process.

In order to initiate a genuine political reform process, mechanisms need to be established which allow a constructive political work of opposition and government in the current constitutional framework. Permanent consultations mechanism between the CNRP and CPP should be established to build confidence among the main political contrahents and the Cambodian public. Objective should be to overcome the political stalemate and develop workable procedures in the political process leading to a political dialogue of mutual understanding, respect and tolerance for differences and a constructive political competition characterized by a competition of informed opinions and public support. Election reforms will be an essential part of this reform process, but will alone not be sufficient to resolve the political conflict between CPP and CNRP. What is also required are consultative mechanisms to reconcile both

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<sup>139</sup> Cambodia Daily: Victory Day over Genocide Celebrated by Many, 08.01.2014

<sup>140</sup> Cambodia Daily: Sar Kheng Summons Diplomatic Corps to Explain CPP Actions, 07.01.2014; Phnom Penh Post: Prime Minister Lauds Military for Handling of Protests, 21.02.2014

<sup>141</sup> Phnom Penh Post: Tense Victory Day Expected, 07.01.2014

political parties and in particular the leadership of both parties over the historical legacy of the past civil wars, the totalitarian Khmer Rouge regime and the difficult two decades of the peace building process. Truth commissions and the establishment of a History Commission supported by Cambodian and overseas universities could provide one mean to deepen and sustain the peace process in Cambodia. There also need discussions whether or not a law on amnesty to current CPP top leaders of the executive and legislative bodies should be created while the law has been supported by CNRP with suggestion of the CPP.

The legislative plays in this process an essential part. As outlined in this report, the reform on the national assembly should maintain the necessary 'checks and balances' in keeping with the spirit of Cambodia's democratic system of governance and both parties should acknowledge to have won the election. The CNRP should receive the Presidency of the National Assembly and share an equal number of seats and chairs in the parliamentary working commissions whereas the CPP can continue to control the executive. This balance between legislative and executive would allow government and opposition to work constructively in the parliamentary commissions and in the plenary sessions on public policies independent from the historical legacy which both political parties divide. The legislative also provides a platform for the opposition and government to develop governance expertise in public policies and to foster the development of a constructive democratic political discourse. This in turn can reflect positively on the public political discourse shaping the political attitudes and views and opinions of Cambodian citizens. The work of the legislative will increase the legitimacy of the current political system, can strengthen the national pride of Cambodian citizens and will make its political process more predictable and reliable. A constructive working relation between opposition and government within the legislative will increase the accountability, transparency and responsiveness of the executive directing it towards democratic governance and help for a more social sustainable and equitable development of Cambodia.

If it is failure at negotiation on political solution as above suggestions, alternatively both political parties should have an agreement to hold the new elections while need to dissolve the national assembly before the end of its term. Both political parties have same position of choosing an election as a means to solve the political crisis. Furthermore, during this political stalemate if either party got the victory by using violent forces through people power or crackdown by armed forces, the upcoming government of the winning party would be no legitimacy. The new elections should be organized in 2015 at the latest, as time will be needed to implement the electoral reform to guarantee minimum conditions for free and fair elections and to avoid repeating post-election disputes and future political crisis.

The excessive use of force during demonstrations needs to be urgently addressed by the RGC. Current band of the assembly and practices of the security apparatus contradict Cambodian and international law and severely undermine confidence in the security apparatus in the Cambodian public. Independent investigations should be undertaken to clarify the circumstances leading to the death of five protesters during labour and CNRP protests and the disappearance of one 16-year old boy. The security apparatus need to be reformed to increase transparency and accountability of the security apparatus. Security personnel including military police, regular police and military force need to be extensively trained in coping with demonstrations and violent protesters. Considered should be to separate security responsibilities. Armed forces and military police should not be involved in internal but exclusively external security matters. Security personnel should be better educated in democracy and human rights to develop a better understanding of political and civic activists and their role in the political process. The current trend towards the perception that the security apparatus only serve powerful interests, but not Cambodian citizens in general needs to be reversed in order to develop understanding and confidence in the RGC security apparatus.

The planned judicial and legal reforms should be fastened through public consultations and both lawmakers adaption from both political parties in order to cope with increasing demands for an independent judiciary and legal proceedings complying with Cambodian and international law. Since more than one decade judicial and legal reforms were not fostered. An independent judiciary can improve public confidence in the political process, increase transparency and accountability of the executive and legislative and provide means to discipline the RGC security apparatus. Electoral reforms as outlined in this report will be a necessary reform process, parallel to above mention reforms to ensure that future parliamentary elections do not lead to a political stalemate followed by period of political and social instability as witnessed after this year's election. Emphasis must be given to reforms of the composition and recruitment of the National Election Committee and subordinated election commission to ensure confidence in the electoral process among all political stakeholders, in particular among the main contrahents, the CNRP and CPP. Media reforms will be required to develop an independent, open, informed and plural Cambodian public political discourse. CNRP and CPP need to refrain from war rhetoric and anti-vietnamese nationalisms in their political discourses, but instead provide role models for the Cambodian public for constructive democratic political discourses based on respect, tolerance and mutual understanding. This can nurture a democratic political culture.

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