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**Challenges and Perspective of Adjusting Parliaments in
Post-Conflict Situations to Parliamentary Culture:
The Cambodian Experience.**

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Introduction

- **Global Context**

Since the collapse of the Soviet Union in the early 1990s, the emergence of newly independent countries that ensued and the reestablishment of democratic regimes in countries which had lived under military dictatorships for almost two decades, new programmes aimed at developing, reinforcing and supporting democratic institutions in those countries were conceived and carried out on a multilateral basis via the United Nations or bilaterally through specific arrangements between donor and recipient countries.

Most of these programmes and projects focussed essentially, in the inception phase, on technical capacity building of parliaments in terms of adequate equipment, human resources and parliamentary training. However, recent parliamentary experiences in a number of countries in post-conflict situations indicate that technical capacity building of the institutions is not sufficient enough to reach the democratic objectives set out by multilateral or bilateral donors.

A new variable, which has been somewhat overlooked, appears as an essential element in effective parliamentary capacity building: The adjustment to parliamentary culture. Recent parliamentary evolution in Cambodia illustrates this point.

The Parliament Culture is defined broadly as the practice adopted by the legislative branch of a state governance system. Therefore the liberal Parliamentary culture means in this study, the practice of the Parliaments of liberal, multi-party democratic regimes where the choice of a system of governance is democratically adopted by their people and that system of governance and its practice is based on the principle of check and balance i.e. the separation of power between the executive and legislative branch and the judiciary. This definition suggests that the opposition plays its role in the Parliament.

In the Cambodian context where the civil law system and the French legal system in particular is predominant, the Parliament culture would mean the practice of both chambers, the National Assembly and the Senate, because the 1993 Constitution amended in 1997 adopted a bi-cameral Parliament.

- **Cambodian Context**

Indeed, since the adoption of the new liberal Constitution on 23 October 1993, the international community has provided more than US\$5 billion to Cambodia, a small part of which has been specifically earmarked to strengthen the legislative bodies. The assistance focussed mainly on the capacity building of members of Parliament, as well as their general secretariats and the supply of equipment and funding for building to meet their needs.¹

The main rationale behind this assistance seems to be that the Cambodian Parliament lacks the technical capacity to efficiently and effectively perform its respective roles, responsibilities and duties defined in the Constitution. Strengthening the capacity of both the members of Parliament and their secretariats would inevitably create a favourable environment that reinforces the capacity of the legislative body to assume its responsibilities. This is because the top of the social pyramid structure relies on its successive and widening “strades” basis levels. If the people, staff and members of Parliament are culturally and technically well trained and opened to the democratization process, they will inevitably influence and pressure the top to change the direction to avoid collapsing due to a lack of support.

After three legislative mandates regulated by a constitution characterized as one of the most liberal and democratic,² and despite the assistance of the international community, the Special Representative of the United Nations Secretary-General for Human Rights in Cambodia stated in his December 2004 report that “[t]he new Government was formed following an unconstitutional process, and the Special Representative has a number of concerns regarding the future of the democratic and pluralistic political system in Cambodia.”³

This observation was firmly contested by the Royal Government of Cambodia, but it raises questions about the genuine commitment of the Cambodian leadership towards the liberal multi-party democratic regime adopted in its Constitution and of the appropriateness of the international assistance that focuses mainly on the technical capacity building aspects of members of

1 International Assistance to the National Assembly of Cambodia, online: The National Assembly of the Kingdom of Cambodia, <<http://www.cambodian-parliament.org>>.

2 Norodom Ranariddh, Préface, *Annales de la Faculté de Droit de Phnom Penh*, 1995. (Phnom Penh: 1995), at 5.

3 Report of the Special Representative of the United Nations Secretary-General for Human Rights in Cambodia, Peter Leuprecht, “Situation of Human Rights in Cambodia”, E/CN.4/2005/116, 20 December 2004, at 2.

Parliament and their Secretariats while neglecting to ensure the genuine and effective willingness of the Cambodia leadership to adjust their past parliamentary culture to that of the new liberal, democratic parliamentary practice as defined in the current Constitution.⁴

The effective commitment of Cambodia's top political leaders (across party lines) can be obtained only if they perceive the democratic process "introduced" as contributing to reinforce their respective clan or interests. Therefore, efficiently supporting a democracy process in Cambodia requires first ensuring that all Cambodian leaders share genuine common interests and accept to work in a constructive way to reach those common genuine interests. The issue at stake has been to build trust among different belligerent factions, political parties and intra-party clans.

The efforts of the international community and the United Nations to bring about the Paris Peace Agreement and to try to ensure its implementation by the different parties⁵ represent their attempt to build trust among different belligerent factions in their task of "peacekeeping" and "peace making." Their efforts to ensure the adoption of a liberal democratic constitution represent their attempt to build trust among the Cambodian political parties and to help them find common interests. This is part of the international community's and the United Nations' "peace building" mission.

There is still a challenge to build up "genuine commitments" from the top Cambodian political leaders to reach their common interests, as stated in the preamble of their Constitution.⁶ This is part of what we call their "democracy building" mission.

While the first types of missions have a "conjuncturel" or short-term characteristic - this is because peace and a political consensus must be found quickly to maintain it-; the latter should be seen as having a "structural" or long-term characteristic. It is a process because "[l]a démocratie

4 The Cambodia Daily, 20 April 2005 and 21 April 2005.

5 The different parties are (i) the State of Cambodia led by the Cambodia People Party, a former communist party; (ii) the Front National pour un Cambodge Indépendant, Neutre, Pacifique et Coopératif (FUNCINPEC), the Royalist party; (iii) the Front National de Libération du Peuple Khmer (FNLPK) later that became later the Buddhist Liberal Democratic Party (BLDP) with republican ideology; and (iv) the Democratic Kampuchea, the Khmer Rouge.

6 The Constitution of the Kingdom of Cambodia, 24 September 1993, Preamble: "...Having awakened and resolutely rallied and determined to unite for the consolidation of national unity, the preservation and defense of Cambodia's territory and precious sovereignty and the fine Angkor civilization, and the restoration of Cambodia into an "Island of Peace" based on multi-party liberal democratic responsibility for the nation's future destiny of moving toward perpetual progress, development, prosperity, and glory....".

ne se repique pas comme le riz.”⁷ Funding a consensus to adopt a liberal constitution represents a first huge step. Learning to respect it represents a further challenge, which requires sustainable efforts from the international community and from the Cambodian leaders in particular.

All agree that tremendous progress has been made since the Peace Agreement. The adoption of a culture of peace and the peaceful resolution of conflicts during the latest political crisis between the Cambodian political leaders illustrate this progress. All agree that time is needed to learn how to practice effective democracy in Cambodia. However, it is justifiable to expect constant progress towards the complete democratic practice. This is because the Cambodian people, as well as the international community, have made tremendous efforts, including financial contributions from public funds to build up democracy in Cambodia’s post-conflict society. This investment must be reported and effectively justified to the contributors.

Considering the obligation to report and to justify by the donors and the Cambodian politicians towards their respective electors, this study proposes to contribute to the analysis of the factors that affect and favour the democratic process. In considering those factors, this study formulates the hypothesis that in the context of peace building and sustainable development, currently experienced in Cambodia, the liberal democratic culture can take place provided there are effective commitments from the top political leaders and relevant assistance from the international community to support the building up of such a culture. We propose, therefore, to study first the factors that determine the political will of the Cambodian leaders before analysing the factors that favour the adjustment to a liberal parliamentary system.

Section I - Factors that determine the political will of Cambodian leaders: Cambodia’s past experiences condition the current behaviour of its Parliament.

1. Political factors:

Cambodia has experienced frequent violence throughout the six political regimes in power since the country’s independence in 1953. The current Cambodian Parliament is the heritage of this

⁷ Pierre Joxe, Phnom Penh, September 1992 cited in Maurice Gaillard, “La Démocratie Cambodgienne: La constitution du 24 septembre 1993”, L’Harmattan, Paris: 1994, at 7.

recent history, marked by more than 20 years of war that ended only in 1998. Therefore, political factors should be analysed in light of this past.

1.1 - The culture of violence is still very present in the government institutions.

The culture of violence is still very present in the government institution, as well as in society, despite efforts to erase it since the peace settlement in 1991. Indeed the analysis of the recent past shows that effective political power has been obtained and preserved either by force or by the combination of elections and military pressure.

This was the case in 1970: On 18 March 1970, the first Kingdom of Cambodia was overthrown by the republicans led by General Lon Nol and supported by the United States of America, applying the “Theory of Containment.” This intended to secure the support of the Khmer Republic regime in the Vietnam War. This coup strengthened the Cambodian communist party known as the Khmer Rouge in their fight to seize power by bringing together all opponents of the Khmer Republic into a Khmer National United Front. The Khmer Republic was a military regime and its officials, a number of whom have survived, are currently either members of Parliament or in the executive branch.

The power was also obtained by violence in 1975: The “Front Uni National Khmer (FUNK)”, headed by Prince Norodom Sihanouk in Beijing but effectively controlled by the Khmer Rouge in Cambodia, defeated the Khmer Republic regime sustained by the United States. The Khmer Rouge seized power on 17 April 1975, thus proclaiming the establishment of Democratic Kampuchea (“DK”), which was a communist People’s Republic regime established by the 1976 Constitution.⁸

Their 250 members of Parliament, called the Kampuchean People’s Representative Assembly (KPRA), were to be “elected by the people through direct and prompt general elections by secret ballot to be held throughout the country every five years.” They were “representing workers, peasants and other working people and the Kampuchean Revolutionary army.”⁹ The majority of

⁸ Scott Loughrey, “How the Washington Post glossed over US culpability in Pol Pot's rise to power”, Media Criticism, online: Media Criticism, < http://www.media-criticism.com/Washington_Post_Pol_Pot_1998.html>. (date accessed: March, 2005)

⁹ The Cambodian Constitutions (1953-1993) Collected and Introduced by Raoul M. Jennar, Democratic Kampuchea (1975-1979) , http://www.dccam.org/Archives/Documents/DK_Policy/DK_Policy_DK_Constitution.htm>. (date accessed: March, 2005)

the Cambodian population has never heard about that general election. It is probable that the KPRA was selected rather than elected to choose the collective leadership of a state presidium, the chairman of which became the head of state; and the Government of Democratic Kampuchea. Despite the practice of a culture of secrecy surrounding state affairs during the DK period, historians have discovered evidence of crimes of genocide and crimes against humanity. There is no evidence whatsoever of the practice of democracy in the DK regime.¹⁰ On the contrary, physical elimination of opponents or “supposed” opponents and purges were widespread practices to allow the DK’s leader to remain in power for three years, eight months and seventeen days.¹¹ The DK was a totalitarian regime led by extremist communists and ultra-nationalists whose policies resulted in the deaths of more than one million people, including members of the families of the Khmer Rouge leaders themselves.¹² The legacy of the DK regime indicates clearly that its officials, whether high ranking or not, never practiced democracy. Many survivors of the DK are members of the current Cambodian Parliament or government.¹³

The People’s Republic of Kampuchea (PRK) was also established by force: The Vietnamese army defeated the DK regime on 7 January 1979 and established the PRK, which became the state of Cambodia in 1989. Nevertheless, the war did not end with the defeat of the DK. Remnants of the regime re-established themselves at the Khmer-Thai border to pursue the struggle in a loose coalition with the two other non-communist resistance movements, Funcinpec and FNLPK , against the Vietnamese occupation and the newly-formed PRK.¹⁴

The international war ended with the signing of the Paris Peace Agreements, which is composed of three agreements: An agreement establishing the framework for a global political settlement aiming to end the civil war and to establish a democratic regime to hold a general election in

10 Documentation Center of Cambodia, “Plan on Decisions To Be Taken in its First Session, First Legislature; April 13, 1976 by Kampuchean People’s Representative Assembly’s”; Unofficial Translation By Bun Sou Sour, online: DCAm; <http://www.dccam.org/Archives/Documents/DK_Policy/DK_Policy_KR_Assembly_April11_13.htm>. (date accessed: March, 2005)

11 U.S. Library of Congress, “Cambodia: An elusive Party”, online: U.S. Library of Congress; <<http://countrystudies.us/cambodia/32.htm>>. (date accessed: March, 2005)

12 de Walque Damien., “Legacy of KR” , supra note 5 at 2, online: World Bank; <http://econ.worldbank.org/files/40041_wps3446.pdf>. (date accessed: November, 2004) Federal Research Division of the Library of Congress, “Intraparty Conflict”, online: UN Library Congress, <<http://countrystudies.us/cambodia/32.htm>>. (date accessed: March, 2005)

13 World Rover, “Cambodia: Modern History”, online: World Rover”, <http://www.worldrover.com/history/cambodia_history.html>. (date accessed: March, 2005)

14 Damien de Walque, “The Long-Term Legacy of the Khmer Rouge Period in Cambodia”, (2004) 3446 World Bank Policy Research Working Paper, at 2, online: World Bank, <http://econ.worldbank.org/files/40041_wps3446.pdf>. [de Walque, “Legacy of KR”].

1993; an agreement guaranteeing the sovereignty of Cambodia; and a declaration on the rehabilitation and reconstruction of Cambodia.¹⁵

Nevertheless, the civil war continued until 1998 because the Khmer Rouge refused to take part in the 1993 electoral process. They accused the United Nations Transitional Authority in Cambodia (UNTAC) of “unfair” implementation of the Paris Peace Agreements because the party of “State of Cambodia” preserved its effective control on its administration and military and security forces.

In 1993, for the first time since 1970, a new regime was established through an acceptable democratic process. Article 12 of The Agreement on the Comprehensive Political Settlement of Cambodian Conflict states that “The Cambodian people shall have the right to determine their own political future through the free and fair election of a constituent assembly, which will draft and approve a new Cambodian Constitution in accordance with...” the basic principle of human rights and fundamental freedom. UNTAC was mandated to prepare and organize the election (Article 13). While the political party representing the DK left the peace process before its completion, the election process continued with 20 parties registered to run for the general election.¹⁶

The election ended with the victory of Funcinpec, which obtained 58 seats. The Cambodian People’s Party (CPP) won 51 seats, the Buddhist Liberal Democratic Party (BLDP) won 10 seats and the MOLINAKA with one seat. Nevertheless, Funcinpec was obliged to compose a coalition government with the CPP, the former communist party of the PRK. Funcinpec agreed for the sake of the national unity and the security of its members, as the CPP had control over the army, the police and the civil administration, according to the Funcinpec president, Prince Norodom

15 United States Institute of Peace, “Peace Agreement Digital Collection: Cambodia”, 1991, online: USIP, http://www.usip.org/library/pa/cambodia/agree_sovereign_10231991.html. [USIP, “Peace Agreement”] (date accessed: March, 2005)

16 KIM-YEAT Dararith, “Le Rôle des Nations Unies dans la Reconstruction du Cambodge”, Mémoire de DEA, Université de Nice, France 1993, p 82. L’enregistrement provisoire des partis a débuté le 15 août 1992 suivi de l’enregistrement officiel. Vingt partis se sont fait enregistrer officiellement par l’A.P.R.O.N.U.C. pour participer aux élections. Il s’agissait des partis suivants: 1- le Parti du Peuple Cambodgien, 2- le Parti Républicain de Coalition, 3- le Parti républicain de développement libre, 4- le Parti des Khmers Neutres, 5- le Rassemblement pour la scolarité nationale, 6- le Parti du Cambodge neutre et démocratique, 7- le Parti démocrate, 8- le Parti du Cambodge libre, indépendant et démocratique, 9- le Parti libéral démocratique bouddhique, 10- le Parti libéral de réconciliation, 11- le Funcinpec, 12- le Cambodge-Renaissance, 13- le Parti d’action pour la démocratie et le développement, 14- le Parti nationaliste, 15- le Parti républicain libéral, 16- le Parti paysan libéral démocratique khmer, 17- le Parti Molinaka et de la Résistance khmère pour la liberté, 18- le Parti démocrate libéral, 19- le Parti pour la République démocratique khmère et enfin, 20- le Parti pour l’Assemblée nationale khmère. Ces partis ont présenté les listes des candidats par province. Il est à noter que le Parti d’Union Nationale du Cambodge, nouveau visage du P.K.D. ne figurait pas sur la liste. S/ 25289, §39, 34, 38.

Ranariddh.¹⁷ This pragmatic approach shows how important the weight of the military and security forces and the administration is in influencing, altering or stopping a democratic process.

The Paris Peace Agreements, signed on 23 October 1991, laid down the first foundations for the establishment of a new democratic process in Cambodia. The Royal Government of Cambodia was not established by violence but by negotiation. However, it was not done without political and military pressure from the losing party.

The July 1997 factional fighting highlighted how fragile the democratic process is in the post-conflict society. A two-headed Funcinpec-CPP coalition government was formed in June 1993, according to the agreed principle of power sharing distributed according to a formula that roughly reflected the popular vote. Nevertheless, it appeared clear to Funcinpec after a honeymoon period with its CPP junior partner that the effective military and administrative power remained almost completely in the hands of the CPP.

Therefore, it became urgent with the 1998 election approaching for Funcinpec to take initiatives to gain some military and administrative advantage in the exiting administration, and to regain some confidence from the population that criticized Funcinpec for its weaknesses vis-à-vis its junior partner and for its relative failure to meet their expectations for societal change. Funcinpec adjusted its strategy in an attempt to get more appointments of its members to the local leadership positions, and by negotiating with the remaining Khmer Rouge forces to join the component of the army controlled by Funcinpec. This strategy led to the July 1997 coup, when the CPP took by military means complete and effective control over the key military and security forces and administrative positions on 5 July 1997.

Nevertheless, democracy was restored with the 1998 general election in which 39 political parties took part but only three won seats in the National Assembly. The CPP won 61 seats, Funcinpec won 46 seats and the Sam Rainsy Party (SRP) won 15 seats.

The 1998 election put Cambodia back on the democratic track. The result of the election turned in favour of the CPP, but it still did not have enough seats to form a government alone. The Constitution requires a government to be formed with the support of a two-thirds majority of the

¹⁷ "Brèves": interview of Prince Ranariddh, Chatoumukh, n°35, September 1993, p6.

122) members of the National Assembly for the second legislature. The CPP needed to make a coalition with either Funcinpec or the SRP.

Numerous contestations of the election results, mass riots and demonstrations firmly contained by security forces and intense negotiations between political parties were part of the process to put Cambodia back on the democratic track. A new coalition government was formed between the CPP and Funcinpec- this time with only one CPP prime minister and Funcinpec as a junior partner in the government.

The SRP became the opposition party in the Parliament. The Parliament then became a bi-cameral parliament through a lawful process of constitutional amendment: The National Assembly became the low chamber and the Senate was created to be the high chamber. The Senate was created as part of a political deal in the election aftermath, under the high patronage of the then-King Norodom Sihanouk.

This process would not have been achieved without a certain degree of understanding and acceptance of the principles of democracy, or without the political maturity of the Cambodian leadership. The culture of democracy was step-by-step replacing the culture of war. This was possible because the top political leaders showed a real political will for the restoration of the democracy.

However, the interviewees observed that while peace has been sustainable so far, political and social stability has been less secure. The nationalistic riots against the Embassy of the Kingdom of Thailand in 2003, the assassination of His Excellency Om Radsady and the leaders of the Unions in the same year, the increasing number of micro demonstrations against land grabbing by authorities or against foreign companies developing huge concessions without consideration of the natural resources accessible to the local population and the 11 month-long political deadlock following the July 2003 national elections are growing signs of increasing social instability.

Furthermore, there are growing fractures within political parties, including the CPP. Civil and military administrations are seemingly passive toward the orders of Prime Minister Hun Sen about the fight against the corruption that hampers the successful implementation of different strategies of the Royal Government of Cambodia. Illegal and moving checkpoints by security forces handicap transportation and trade development. The impunity of high-ranking officials and

the children of the elite class place Cambodians into an unequal footing in front of the law. Increasing drug traffickers endanger Cambodia's youth. These concerns, denounced by the Prime Minister, are growing signs that Cambodia is at risk of falling back into the habit the of political and social instability, of a post-conflict society, the image of which the Royal Government of Cambodia has been trying to erase in order to attract tourists and investors. The Prime Minister himself stated that reforms, land reform in particular, must succeed if Cambodia wants to avoid a new revolution.

Finally, the problematic promulgation of the constitutional law in 14 July 2004 and the increasingly violent language used by the political leaders demonstrate further the intensity of Cambodia's culture of violence, the increasing importance of client-patron relations and the extreme fragility of a democratic process in a post-conflict society.

These short historic descriptions clearly highlight that the culture of violence is still very present within the Cambodian institution and society. At the political level, power has been obtained and kept either by military force or strong dissuasion or by both; and rarely by constructive persuasion from political leaders across party lines. Agreement with constructive approach was adopted only when the former King intervened to diffuse crisis. .

Considering the average age of the parliamentarians, we can fairly state that many of them have been exposed to the culture of violence, which in turn conditions their current behaviour. Programmes aiming to strengthen the Parliament in the post-conflict society have to take into consideration this culture of violence that the majority, if not the quasi-totality, of the members of Parliament wish to replace as soon as possible.

Nevertheless, a cultural change takes time and the individual willingness of the parliamentarian. Institutional willingness is different from genuine and effective political willingness. Further, having genuine and effective political willingness to change is often not enough if the top- the effective patrons- and surrounding environment are not yet ready for change, or are not yet ready to influence and impose effective change. Thus the expectation of outputs and impacts of the assistance programme should be realistic and objectively targeted.

1.2 - The client-patron relationships are increasingly based only on individual interests rather than party's interests.

The importance of client-patron relations in the Cambodian administration is not unique. The United States' public administration adopts the spoils system where high-ranking officials change at each new presidential appointment.¹⁸ The experience of client-patron relations in the United States' public administration is closely linked to the impermanence of public positions and the constant change of the political leadership every four to eight years as a consequence of presidential administrations that are limited to two terms by the United States' Constitution.

Still, it is evident these patron-client relations were highly important during the United States' last two elections in re-electing the current administration of President George W. Bush. In Cambodia, the civil servant has a permanent statute, and the country is not at the level of liberal democratic, institutional development of the United States. The client-patron relation is indeed a crucial and structural factor in influencing favourably or not the democratic process in Cambodia.

The client-patron relation has been an integral part of the Cambodian culture. It was de facto institutionalized in 1993 as a result of the implementation of the peace settlement and the political deal between the coalition government.

The Annex Two of the Comprehensive Political Settlement of the Cambodia Conflict stated in Article 5 that "...all Parties agree to undertake a phased and balanced process of demobilization of at least 70 percent of their military forces"... and "...to the extent that full demobilization is unattainable, to respect and abide by whatever decision the newly elected government that emerges in accordance with Article 12 of this Agreement takes with regard to the incorporation of parts or all of those forces into a new national army."¹⁹

The elected Funcinpec and CPP leaders decided to integrate those forces as part of the deal to form the coalition government. In the deal to share power in the government and in the Parliament, each party in the coalition (Funcinpec, the CPP and BLDP) tried to integrate its

18 Pactet Pierre, "Institutions Politiques et Droit Constitutionnel", Mosson, 10^{ed}, 1991, p 117. [Pactet, "Institutions Politiques"]

19 United States Institute of Peace, "Peace Agreement Digital Collection: Cambodia", Annex 2: Withdrawal, Ceasefire and Related Measures, 1991, online: USIP, <http://www.usip.org/library/pa/cambodia/comppol_10231991_annex2.html#art5> (date accessed: March, 2005) [USIP, "Peace Agreement"]

military and civil personnel as much as possible into the state institutions, the legislative branch and, in particular, the executive branch at the central and, to a certain extent, the provincial level.

The two-headed government led to the establishment of two informal parallel administrative and security force structures, similar to shadow governments, through which their respective informal chains of command operated within the formal structure of government. Thus each state institution has its own co-leadership divided by party lines. This promotes a formal balance of power sharing but creates an effective imbalance of power.

Each party has its own political and administrative personnel that have informal chains of command within the formal structure of the state institution. For instance, key ministries have co-ministers with secretaries and under-secretaries of state from different coalition partners with their affiliated administrative personnel. This situation resulted from the political deal mentioned earlier but also from the reciprocal mistrust between political parties that often leads to unwanted, detrimental competition between the two chains of command within each public structure.

Each party believes that the competition is necessary to preserve or gain their respective power and influence. The Parliament, the National Assembly in particular does not escape from this pattern. The situation has improved significantly for the Senate and for the government since the second legislature (1998) but the structures of patron-client relations remain similar. The National Assembly is experiencing positive change, but there are still many challenges to overcome, in particular the issue of neutrality of its civil servants.

While the two “shadow governments” co-existed in parallel along with the state structure at the central level, only one informal structure existed at the local level. Indeed, the situation at the local level was different in the sense that the power sharing has not really been implemented at that level.

The power of local authorities at the district, commune and village levels have remained unchanged since the Eighties or 80's. . Consequently, the local administration has remained in the hands of the CPP, as it had control over more than 80 percent of the territory before the Peace Agreement in 1991. . Funcinpec and the FNLPK/BLDP shared the remaining territory with the Democratic Kampuchea Party, which controlled their zone until fully integrating their armed forces into the Royal Government in 1998.

In the zone controlled by the CPP, the administrative informal party structure is tied closely to the state administrative structure. As those districts, communes and village chiefs wanted to remain in power, they further accentuated their loyalty to the party to protect their own interests. They directed the local public administration to be in the service of the CPP, at the detriment of other parties, in particular during the electoral period. The effectiveness of the party to control its constituents would depend on the result of the election.

This situation has slightly changed since the 2003 commune elections, especially in the communes won by the SRP and Funcinpec, which has co-existed the formal state administrative structure lead by SRP or Funcinpec and the informal administration of the CPP, which often detains effective power.

Thus the local authorities that the CPP relies on to convince “the basis” constitute an excellent machine of client-patron relations. The impact of the local administration on the Parliament is made possible through the support of local authorities. The adoption of the forthcoming election law for the Senate will further determine the mechanism of interaction between the local authorities and the Parliament. In this interaction, the provincial offices of the National Assembly can play a significant role in favouring or limiting the client-patron relation. It can contribute to strengthening the adjustment of the current parliamentary culture to the liberal parliamentary culture significantly if their staff is neutral and well trained to assist not only the parliamentarians in field missions but also to inform and remind the local authorities about their constitutional obligations and the public about their prerogatives and responsibilities. Unfortunately, the provincial offices have many weaknesses to overcome.

Like in the local administration, the judicial power seems to escape from the power-sharing formula and is one of the engines of the client-patron structure thanks to the historic context. The majority, if not totality, of the judges were appointed by the CPP and politically affiliated to them. It is acknowledged that they are not as independent from the executive branch as the Constitution requires them to be. More specifically, they are not independent from the parties in power and the most powerful in particular, the CPP.

The client-patron structure and corruption in the judiciary has heavy consequence in the implementation of the rule of law. Judges too often make their judgement depending either on the


“wishes” of the parties in power or the financial opportunity presented to them by the parties in conflict.²⁰ The impact of the judiciary on the functioning of the Parliament, in particular in its adjustment to the liberal parliamentary culture, is more than crucial in the current context of Cambodia.

This impact can be appreciated, among other factors, through the facility of the members of Parliament to sue each others for matters related to their political activities and the judiciary’s support of the Parliament’s procedures to strip the immunity of lawmakers.

The client-patron relations system and the political affiliated appointment of the civil servants according to the successive political deals do not favour the neutrality of the public administration as required by the law on the status of civil servants of the executive branch, as well as the legislative branch. This situation hampers the efficiency of the public administration and generates the distrust of the people on the public administration contributing to their discredit.²¹



The neutrality of the administration is still an important issue despite the formal request of the political leadership. The efficiency and effectiveness of the public administration, including that of the Parliament depends heavily on the neutrality criteria.

Thus strengthening the capacity of the Parliament has to be thought of in close coordination with, or in the broader context of, the public administrative reform and decentralisation. This is because the local authorities play a crucial role in influencing the vote of their population, thus the choice of the members of the parliament,  despite the formal calls to the strict neutrality of the administration by the central government.

1.3 - Informal powers can play a crucial role in the post-conflict society because the balance of power is often in their hands.

20 Nissen J. Christine, “Living Under the Rule of Corruption: An Analysis of Everyday Forms of Corrupt Practice in Cambodia”, Phnom Penh: Centre For Social Development, March 2005, at 30.

21 Ibid at 45.

It is crucial to distinguish and identify those who hold formal power from those who have informal power. This is because their respective supports are essential for initiatives ensuring the progress of the democratic process.

Referring to the inter-party relations, in general, the CPP has secured formal, as well as informal power. When formal power is handed to Funcinpec, the CPP manages to secure informal power. Indeed, interviews and analysis conducted show that the power-sharing turned in favour of the CPP. When the CPP agreed to concede the formal power to its coalition partner Funcinpec, the CPP managed to preserve its informal power by keeping the operating means in the hands of its affiliated personnel. For example, the CPP maintained strict control of key financial and human resource positions, the general secretariat positions, the institutional stamp, etc.

It appears also that the CPP's affiliated personnel receive greater and more sustainable backup from their leadership, a subtle attitude that further entertains the fidelity of the client-patron relation. Finally, the effective control of the state institution by the CPP results also from a better management of its human resources: There is a greater degree of permanence in key positions held by its affiliated personnel. For instance, the Funcinpec Secretary General of the National Assembly changes with each new legislature, whereas the CPP Secretary General of the Senate remains unchanged for a longer period of time. This permits the CPP personnel to have a good understanding and knowledge of the institution. This is a great advantage as these personnel evolve in the highly politicised environment the Cambodian administration is experiencing and in a highly politicised institution such as the Parliament.

As a result, the General Secretariat of the Senate better performs its duties than that of the National Assembly. The observation of the international community that the CPP-affiliated personnel are relatively more competent technically than those of Funcinpec confirms this analysis. Nevertheless, Funcinpec personnel have a more sophisticated linguistic performance than their CPP colleagues, which sometimes allows them to accentuate their formal power and build up some informal powers where they do not hold them.

While the patron-client inter-party structure still exists, the dynamic has slightly changed from the focus on inter-parties to that of intra-parties. Indeed, the client-patron relations are evolving from the context of inter-parties competition into that of the intra-parties competition. This results from the fact that all political parties, including the CPP, which has insured effective

control over all state institutions, reach a certain limit in gathering their clients at the current level of resources (political power and financial resources) available to them respectively and are turning to strengthen the patron-client within their parties in order to preserving or gaining the diminishing resources at their disposal.

The clans have developed and increased within the political parties as made evident by internal contestations or divergences of viewpoints in each party, due mainly to an imbalance of the intra-party power-sharing. As the client-patron relations are increasingly, if not almost exclusively motivated by the individual interests rather than the party interests, or the ideological-based interests, these relations are increasingly volatile to the point where the development of a closer patron-client relation around direct family links becomes either strategically or unintentionally a reality in the Cambodian politic. Thus within the informal power structure along party lines has been developing several informal power structures at the clan levels.

To these clan levels, family links come to reinforce the classic client-patron relations: Cambodia's political elite, which stem from modest origins, have established family links with people of bourgeois origins, or with the military and security elite, or with the economic elite in order to ensure and secure the solidity of the patron-client relation in a crisis period. Such a strategy was used in Europe and on the American continent over the past centuries either to preserve the political power and wealth of a family or to maintain peace and stability between emerging nations. However, those states were not at that time regulated by a multi-party liberal constitution like Cambodia is presently. The family links accentuate the weight of the patron-client relation and, consequently, the informal power structure.

In the past, some assistance programmes failed to properly identify the formal and informal power structures that regulate the relationships within the Cambodian government institutions, including the Parliament, and to secure the genuine support of the leaders from both structures. The programmes have failed to optimize their outcomes and impact because of a lack of support and ownership, or a passive resistance and even open opposition, from the different power structures.

Similar to the informal structure, the "underground" political role of the military and the economic elite are crucial in the Cambodian society.

1.4 - The political role of the army and security forces and the administrations is also a key factor in the Cambodian political environment.

The army plays an important role in strengthening the democratization process either by giving the means to people with modest social origins to be educated or access high positions by their own merit (**La conscription en France, Military Academy in Thailand**). The army can also contribute to the democratization process by acting as the guardian of the Constitution behind the King, as is the case in Thailand.

The Cambodian army, like other state institutions, is conditioned by its recent past of violent experiences, the political environment that favours the client-patron system and the lack of expertise and resources that modern armies, like those of France and Thailand, can afford.



Until 1998, the remaining forces that were not demobilized were integrated into the Royal Cambodian Armed Forces (RCAF) according to the terms of the Paris Peace Agreement and subsequent political deals. Up to July 1997, the structure and chain of command of each armed force, except those of the Khmer Rouge, remained intact even if those forces were integrated into the global structure of RCAF.

Concretely, this means that the structure of the BLDP, Funcinpec, the CPP and the Khmer Rouge forces remained in their military region of establishment or affectation. For example, Funcinpec remained in the northwest of Cambodia and in Phnom Penh. Former Khmer Rouge soldiers stayed in Pailin and the northwest. CPP forces stayed in the eastern and southern regions of the country, as well as in Phnom Penh. This situation created de facto armed forces within the larger structure of RCAF.

Each of these de facto armed forces had direct chains of command linked to the political movement or party that established and supported them during wartime. Many members of these forces are currently either in the coalition government or in the Parliament. The survival of those forces and of the political parties that established them are closely linked. The dissolution of one (de facto armed force) may weaken, or worse, generate the effective disappearance of the other (political party). Funcinpec has been experiencing weakness. The BDLP and the Khmer Rouge have all but disappeared because their de facto armed forces were obliged either to dismember their chain of command and dispatch their troops within other units or to dissolve their forces.

In terms of training, the Cambodia military does not have the privilege to follow the military academy like their French, Thai, Malaysian or Singaporean colleagues. Rather, the majority of the soldiers acquire knowledge and experience in battlefields. Very few of them have a formal military academic background of combat strategies and methods regulated by a modern military code of conduct, a strict ethical code, the Hague or the Geneva Convention on the law of war and the humanitarian law. This means that they need assistance in these fields and are very demanding on programmes in these topics. Their needs are crucial when we know the importance of their political role as active officers, a chief of a clan in the Cambodian context. Their needs are further primordial when looking at the career of prominent officers who became key politicians.

Prime Ministers, First Vice-Presidents of the National Assembly and Senate were initially officers in their respective de facto army.

In the past, a pre-determined number of parliamentarians represented the army in the Parliament. Most of time, their weight on the decisions of Parliament was very important, considering the highly disproportioned percentage of their representatives to the total number in the population. These members were often retired generals.

This representation does not exist in the current Constitution because the Parliament represents the people of Cambodia as a whole and any imperative mandate is strictly forbidden. However, an important number of former officers have become members of the Parliament and the government. Most of them obtained their nomination for their party as a recompense for past military actions. These actions condition their political visions, the way they exercise power and the value that they transmit through their behaviour as political leaders. This reality influences the current practice of the Parliament and any cultural adjustment program has to take this factor into consideration.

1.5 - The influence of the economic elite on politics is increasing.

Similar to the military, the influence of the economic elite on the political elite and the links between the two are not to be neglected. While the army and security forces are still playing a crucial role in helping the political leadership and elite to gain control, maintain and adjust their

power during instable and crisis periods, the business community is taking over an increasing role in influencing the political evolution of Cambodia in its democratization process. This influence can be observed through the analysis of the financing system of political parties.

There are at least six financing sources (cash, equipment, facilities, goods, advisors...for political purposes):

1. The party membership fees;
2. The incomes generated from the legal activities of the party;
3. The gifts or contributions provided by the party officials (civil and military) from their own assets. ;
4. The gifts or contributions from non-member partisans;
5. The gifts provided by the business community;
6. The contribution from foreign states. According to article 29 of the “Law on the Political Party”²², the contributions from foreign states, associations, NGOs, public enterprises, public establishments, public institutions or foreign companies other than from the state under the national budget, divided equally to finance the electoral campaign, are strictly

While it is very difficult to appreciate the accuracy of the financing sources of the political parties, interviews conducted seem to highlight the following patterns: The CPP optimizes the five first financing sources. Funcinpec does not have the income from the capital investment and receives few gifts from the business community. The business community prefers to deal with the CPP because “they hold effective power.” Funcinpec relies on its own officials, members and partisans.

The SRP is not in power and therefore receives few or no gifts from the business community in Cambodia. The SRP relies on its members and overseas Cambodian partisans, including the business community. The opposition party does not have capital investment.

The CPP is the only party that has capital investment because it received the asset during the privatization of state companies in 1989 during the State of Cambodia regime while the other parties were fighting against it. Some interviewers seemed to suggest that all parties might have received, in one form or another, some assistance from foreign states, foreign NGOs, some public

22 No. CS.RKM.1197.07

establishments and companies, even if these actions are considered unlawful. This information is impossible to verify and, therefore, should be considered with extreme precaution.

Private supports to individual political leaders who use them for humanitarian causes are common and even encouraged by the state television. While the genuine assistance of the business community and political leaders to support humanitarian causes should be encouraged, ethical problem may emerge when a gift is made with the intention “to buy” a vote or to get the favour of the political elite or business leadership. Unfortunately, this practice seems to be widespread. This factor influences undeniably the Parliamentary culture, as the parliamentarians may tolerate this practice within its rang and that of the government because they were elected with these funds. Consequently, they may not exercise their role, functions and responsibilities properly as required by the constitution.

Furthermore, there is greater and greater interaction and integration between the business community and the political elite because power is identified by wealth, and being wealthy is considered to garner the means to get power on its side. Thus it is commonly accepted that member of the government or the Parliament run a private company, and that prominent businesspersons become politicians.

It should be acknowledged that, like in all countries, running an election can be very costly for a candidate that does not receive support from a party. Cambodia does not escape this rule, especially when constituents expect the candidates to give them gifts. Some parties do not have the means to support their own candidates who have to finance the election in their respective circumscription by themselves. Thus the interaction with the business milieu and the establishment of the client-patron relation is widely accepted, and no law regulates or prevents such interactions if it cannot be demonstrated by the court that such acts of interaction constitute an act of corruption as defined by the law.

During the electoral period, the role of the business community was further accentuated because it directly financed the campaigns of some candidates in one way or another and even accompanied them on their campaigns. The election law does not seem to prevent them from such actions.

Considering the increasing role and influence of the business community in the election and political outcome, adjusting the current practice of the Parliament of Cambodia in a post-conflict society requires assistance programmes to take the behaviour of the business community into consideration as well.

The differences that exist among political parties or clans are not due to the divergence of ideologies among the political parties- all of them has espoused the principle of free market ideology-. Those differences result mainly from the imbalance of power and interest sharing between political parties and clans within each party. This results in the lack of trust between different political parties and within each party.

Rebuilding trust among the different political parties through constructive work in respecting the initial spirit of the Constitution is a necessary prerequisite for the democratization process. The Parliament is the best place to implement programmes that build trust among politicians.

However, the effective powers rest in the hands of the leaders of the executive branch and their formal and informal power structure are supported by the main military and security forces. Powers also are financed by the affiliated business tycoons. They constitute in clans and evolve in highly client-patron systems.

This system is one of the key factors to be taken into account, along with the culture of violence, when considering adjusting the practice of the Cambodian Parliament. This is because no effective and substantive adjustment can be made if this group does not (i) understand the usefulness of the liberal parliamentary culture and (ii) accept “to play the game.”

Obtaining the Parliament’s endorsement is crucial. Thus adjusting the current practice of the Parliament to a liberal parliamentary culture requires careful consideration by the Parliament and its constituting elements that we call the “political factors” as analysed earlier. However, the constituting elements of the Parliament are not limited to its political factors. The institution and its mechanism and the cultural environments are important as well.

Result of the elections in term of seats

Political Party / Election	1993	1998	2003
FUNCINPEC	58	46	26
CPP	51	61	73
BLDP	10	-	-
Molinaka	1	-	-
SRP	-	15	24

2. Institutional and cultural factors:

The institutional and cultural factors that affect the adjustment of the Cambodian Parliament to the liberal culture can be appreciated through the analysis of the four classic functions of the Parliament (i.e.; representation, deliberation, monitoring and selection), and the coordinating role of the Cambodian Senate. These functions are defined in the Constitution adopted by the Constitutional Council on 21 September 1993 and promulgated by former King Norodom Sihanouk two days later on 23 September 1993.

The current Constitution comprises 16 chapters consisting of 158 articles. There were several amendments, the latest on 4 March 1999, when the second legislature adopted a more substantial second amendment to create the second and higher chamber of the Parliament, the Senate.

Cambodia adheres to the principles of a liberal democracy and pluralism, which suggests that the principle of checks and balances- the direct consequence of which is the separation of powers between the legislative, executive and judiciary embodied in article 51 of the Constitution- is effective. Among the three powers, the Constitution gives the Parliament a predominant role to play compared to that of the Government.

The prerogatives and competencies of the National Assembly²³ and the Senate²⁴ are defined under Headings VII, VIII and IX, respectively, in 42 articles of the Constitution. The prerogatives and competencies of the Royal Government are defined in only 10 articles. This gives a clear indication of the weight that the Constitutional Council²⁵ wished to give to the Parliament. The practice is different from the spirit of the Constitution.²⁶

23 23 articles.

24 17 articles.

25 Nevertheless, it would appear that the second amendment to create the Senate was motivated by a different spirit than the spirit that animated the constitutional assembly.



2.1 - The representation function of the Parliament is limited.

Article 77 of the Constitution is the only article in the Constitution dealing directly with the representative function of the members of Parliament. For the Senate, the electoral law in the drafting process will probably clarify this issue. The members of Parliament wish to play fully their representation function. However, they are facing numerous constraints, including an unclear issue of accountability, a generally unattainable seven-tenths quorum, and budgetary constraints.

- **The members of Parliament have an unclear legal situation regarding their accountability.**

It is unclear to the members of the National Assembly about who they are accountable to. Is it to the party that nominated them in the general election, or to the constituents that elected them as members of National Assembly, or to the people of Cambodia as a whole, represented by the members of National Assembly?

Article 76 of the Constitution seems to answer this question by stipulating that the members of the National Assembly are elected by a free, universal, equal, direct and secret ballot for a five-year mandate.

According to Article 77, they represent the entire Khmer people, not only Khmers from their constituencies, and their mandate shall not be an “imperative mandate,” meaning that neither the constituents nor the party of the member of Parliament can instruct or pressure him or her to take a stand or vote differently from his or her own conscience, leaving aside the possibility of the electors or the party to revoke him/her. In the first legislature, 120 members were elected to the Parliament, 122 were elected in the second legislature and 123 were selected in the third legislature.

26 Mysliwiec Eva, Ok Serei Sopheak and Kim Yeat Dararith, “Baseline Study of the Practice of the National Assembly and the Senate”, report commissioned by The Parliamentary Centre of Canada / CCLSP, (Phnom Penh: 2002). Unpublished report.

According to Professor Jean Marie Crouzatier, article 76 of the Constitution considers the candidates individually; separate from their party that the Constitution refers to only as an association. He added further that article 77 infers that the Cambodian Constituent has chosen a system of liberal democracy representative, and not a direct or popular democratic system.

This suggests that once elected as a member of parliament, one should not defend the interests of its electors but the general interests of the country, let alone those of the party that he/she was a candidate for.²⁷

However the practice shows that the political party plays a predominant role in Cambodian politics. The interviewed members of parliament acknowledge that they felt more accountable to their party, in particular to the chief of the party rather than to their constituent or the Cambodian people as a whole. This is because the party, specifically its president, is the one who nominates them individually to the party electoral lists that the electors at each electoral circumscription are called to vote for. Thus the electors vote for the party not for the individual. This statement reflects the practice of an electoral system based on proportional representation regulated by the Paris Peace Agreement and the electoral law.

Indeed, the Annex 3.2 of the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict states that “[t]he election will be held throughout Cambodia on a provincial basis in accordance with a system of proportional representation on the basis of lists of candidates put forward by political parties”. The Annex 3.6 further states “[p]arty affiliation will be required in order to stand for election to the constituent assembly. Political parties will present lists of candidates standing for election on their behalf, who will be registered voters.”²⁸

The electoral law promulgated by Kram (Law) n° NS. RKrm-1297-06 dated 26 December 1997 and amended on several occasions, follows the principle of proportional representation and gives the party a dominant role over the candidate throughout the electoral process. Candidates exist but through their party in the electoral process and the dominance of the party is still present once

27 Crouzatier Jean Marie, “Mandat Parlementaire et Appartenance Politique: L’Affaire Sam Rainsy”, *Chronique de l’Assemblée Nationale, Annales de la Faculté de Droit et des Sciences Economiques de Phnom Penh*, 1996, Editions Thevoda, pp 83-85. [Crouzatier, “Affaire Sam Rainsy”]

28 USIP, “Peace Agreement”, *supra note 19*, online: USIP, <http://www.usip.org/library/pa/cambodia/agree_comppol_10231991_toc.html>

the candidates are elected and become members of the National Assembly, at least in practice. Crouzatier, analysing the UNTAC electoral law with the Kelsennian theory stated that

“...the UNTAC electoral law would make Cambodia a “Parties State” or a “Partyocratie” (expression frequently used for Italy): a State in which the parties take ownership of the national sovereignty; a State in which – according to the rude formula of Max Weber- the deputies become “master of the elector and servitor of the Chief engine of the party”.

While this statement was made to qualify the consequences of UNTAC electoral law that became void with the adoption of the 1997 electoral law, this statement is still accurate to qualify the current practices of the parties in the Parliament and in Cambodian politics because the 1997 electoral law adopted the same system of proportional representation. This electoral system is known for alienating and transferring the elector sovereignty to the parties, whose leaders are assured to be elected if registered on the top of the electoral list.²⁹

The domination of the parties is real and vigorous despite the spirit clearly stated in the Constitution where the Party should part ways with its candidates, once they are elected members of the National Assembly. Thus the practice of the domination of the party, in particular of its chief, over its members counter balances the parliamentary regime that intends to make the members of parliament independent from the electors and party. This practice is not exclusive for Cambodia. Professor Pactet Pierre noted that the current trend is that the political parties animate the political life while the institutions just provide the frame.³⁰

The issue of accountability for the senators is less acute because they are appointed by their party according to the formula of the political deal made in 1997, except for four of them whom two were appointed by the King and two who are supposed to be elected by the National Assembly. In the future, the Senators, whose numbers shall not exceed half that of the deputies will be elected by a non-universal election, except for 4 of them. The electoral law for the Senate will probably clarify the issue of accountability. However, it is doubtless that the party will play a dominant role similar to what is with the members of the National Assembly.

It is not surprising that the parliamentarians do not a clear idea to whom they are accountable to. Contrary to the common idea, the Cambodian parliamentarians understand well the spirit of their

²⁹ Pactet, “*Institutions Politiques*”, supra note 18, at 103.

³⁰ *Ibid* at 112.

Constitution made by their constituents -in a hopeful after-war environment where everything seemed permitted and possible- among which many of them were part; but they are caught by the Cambodian realities marked by the importance of the patron-client system and its social pyramidal structure; and the electoral system of proportional representation that alienates the electors sovereignty to the party.

However considering the current political realities, the electoral circumscriptions and trend in votes for the general elections, it is hardly conceivable to suggest the adoption of the electoral law based on the majority system. The adoption of the majority system with the uninominal or list mode would first be against the principles stated in the Paris Peace Agreement and second result unavoidably in the exclusion of the two smaller parties (Funcinpec and Sam Rainsy) from the parliament, which is contrary to the principle of “liberal democracy and pluralism” stated in the Constitution³¹ and the liberal parliamentary culture encouraged by the international assistance programmes.

Despite the legal confusion, as usual Cambodian politicians know to adopt a pragmatic approach when facing realities that they have to deal with as a matter of urgency: between law and custom, they turn themselves to custom and the custom has been the dominant role of the party and its chiefs. This observation suggests that the party chiefs have to play a crucial role in clarifying the issue of accountability of parliament members or in increasing the performance of their representative function. In this respect, some parties such as the CPP and SRP have already asked not only their parliamentarian members but also their party cadre, to systematically visit their constituencies to be closer to the population in order to better capture their vote. Should the political leaders genuinely requested the parliamentarians and parties’ cadres to apply the good practices of the parliamentarians or the principle of democracy during their visits to their constituencies, the performance on the representative function of the parliamentarians and their responsiveness to their constituencies will certainly improve as the consequence of the political will of their leaders.

31 Article 1: Cambodia is a Kingdom with a King who shall rule according to the Constitution and to the principles of liberal democracy and pluralism. The Kingdom of Cambodia shall be independent, sovereign, peaceful, permanently neutral and non-aligned country.

- **The lack of technical and legal expertise is tremendous.**

The Parliament holds two ordinary sessions of a minimum of three-month each per year in Phnom Penh. The King, the Prime Minister and at least 1/3 of the members of each chamber or their Standing Committee can call for extraordinary sessions. The agenda of the extraordinary session and its proceedings shall be communicated to the people. In case of a state of emergency the National Assembly shall meet every day continuously and cannot be dissolved. The King shall declare a state of emergency with the agreement of the Prime Minister and the presidents of both Chambers and the National Assembly is competent to terminate it. Through this provision, the Parliament is in control of the situation in the event that the state is facing danger.

In addition to ordinary and extraordinary sessions, the Constitution gives the Parliament the right to assemble a national Congress to resolve important issues facing the nation. Such a jointly organised Congress could give both chambers an enormous advantage to influence the policy of the executive branch. However, such procedure has not been used yet because a law still has to be adopted to “determine the important national issues mentioned above...and the organization and functioning of the Congress. (Article 116 and 117 of the Constitution). Rendering the National Congress operational and active would help improve the representative function of the parliament because “the important national issue” would have a special forum to debate. This in turn would contribute to a liberal parliamentary culture.

For all plenary sessions, a quorum of 7/10 is required. This high requirement was cited by the members of the parliament interviewed as influencing their ability to fulfil their representative functions by limiting and determining their actions.

Furthermore, this high quota requirement has also constrained the Parliament to operate smoothly; because some parties used it as a political tool to obstruct the work of the parliament or as an action against the Government. However, this is a democratic tool that is part of a liberal parliamentary culture as far as it is used in a constructive way.

The SRP has used this political tool many times to leverage its negotiating power, some times regrettably in a non-constructive way that paralyses the legislative work of the parliament without improving the representative function of the members of parliament. However it must be

acknowledged that often, the use of such a radical and non-constructive strategy reflects a deep frustration or uneasiness of an opposition to play an effective and constructive role in the Parliament.

The role of the opposition in the Parliament seems to be decreasing. While the opposition only obtained 15 seats during the second legislature, they led a commission and had members in almost all commissions of the Parliament. At this 3rd legislature, while they won 24 seats, they are not leading any commission nor does it have any member within any commission at the National Assembly. This not only excludes them from the commissions' work but also removes them from the means, the financial means in particular, to play their role as parliamentarians of the opposition representing 1,130,423 voters, i.e. 21.87 % of the total voters.³² This exclusion or auto-exclusion does not favour the representative function and responsiveness of the parliamentarian to their constituencies; or the liberal parliamentary culture; or the democratization process as a whole.

An amending of the Constitution was signed by the King on to lower the quorum requirement from 7/10 to 6/10 in order to limit the difficulty of the parliament to meet due to a shortage of quorum. It is hoped by the majority of the interviewers that this initiative along with the establishment of the time limit of 20 minutes of intervention for each parliamentary group at the plenary session was made in a genuinely positive spirit with a constructive approach to avoid the parliament to be too often paralysed due the a too high quorum requirement; and this is not part of a strategy to limit the actions of the opposition in parliament.

- **The parliamentarians avoid visiting their constituencies because of budgetary constraints.**

The budget constraints that the parliamentarians are facing have two origins, one is financial and one is cultural.

Article 81 and 105 of the Constitution stipulate that the National Assembly and the Senate shall have an autonomous budget to conduct its functions. Their Internal rules and Regulations states

32 National Election Committee, "Total Votes for Each Party", online: NEC, <http://www.ncelect.org.kh/results_of_nec/contents_result_of_nec.htm>. (date accessed: March, 2005)

the draft budget of the National Assembly and the Senate shall be adopted by their respective institutions and then forwarded to the Ministry of Finance to be inserted into the National Budget.

The budgeting and disbursement process takes the following steps: the Secretariat General formulates a draft budget based on the previous year's budget for the National Assembly and on the following year plan of activities for the Senate; and then proposes to the Finance Committee for endorsement before submitting it to the Permanent Standing Committee for approval. Then the Chair of the Second Committee for the National Assembly (CPP) and the Secretary General for the Senate (CPP) "negotiate" with the Ministry of Finance (CPP) for its inclusion of the agreed amount of the National Assembly and the Senate's annual budget in the yearly National Budget. For the budget disbursement, the Committee for Finance and Banking of the National Assembly and by the Secretary General of the Senate make their respective request to the Ministry of Finance who will disburse according to the financial conjuncture.

While the budgetary provision in the Constitution aims to give the parliamentarians the means to operate independently, this independence is often limited by the mechanism of disbursement controlled by the Ministry of Finance and the Treasury, which sometime takes time to disburse funds due either to the lack of liquidity or lack of willingness. The delay in disbursement affects the works of Parliament; and the Secretary Generals are obliged to find ways to overcome the cash flow problem in order to allow the Parliament to work smoothly.

The budget for field visits to their constituency is not sufficient. It hardly covers the travel costs for the members of parliament and their staff. It does certainly not cover the "presents" that the parliamentarians bring to the constituents, whereas as the latter' expect their parliamentarians to distribute them presents when visiting them. The insufficient budget is one of the main reasons preventing many parliamentarians to fulfil their representative function.

The custom/habit of linking the parliamentarians' visit to their constituents with the distribution of "presents" during the electoral period or of humanitarian assistance during a humanitarian crisis has created a bad habit among the population who expect parliamentarians to bring presents each time that they come to visit them. This raises false expectation from and sends a wrong image about the parliamentarian's functions and duties to the population. For many of them, the function of parliamentarians is not very different from the Red Cross agents whose missions are to distribute humanitarian aid and assistance.

This wrong perception raising false expectations has long-term impacts on the ways that the parliamentarians fulfil their representative functions. Visiting a constituency is equivalent to important expenses that need to be funded in a way or another for the parliamentarians. Joining a parliamentarian meeting means receiving presents and humanitarian aid or assistance for the population. The presents or the humanitarian assistances essentially motivate their venue. This means concretely that rich parliamentarians can afford to visit their constituencies as often as they wish whereas poorer parliamentarians have to limit their visits to a minimum. Consequently, rich parliamentarians or their parties will have more exposure and thus are more likely to win the election than those who are “invisible” in their constituencies.

Their responsiveness to their constituencies has also been limited. In the two provincial offices (Kompong Chhnang and Pursat) of the National Assembly visited out of 24, only one has an appropriated office . In this operating office, the administrative mechanism needs to be improved to properly support the work of the parliamentarians. The follows-up system is very limited, nearly inexistent: For instance, the Kompong Chhnang office received 57 complaints during the whole second legislature i.e. less than one per month. They transmitted the complaints to their head office at the National Assembly, which forwarded them to the Commission on Human Rights and Receptions of the Complaints, which in turn requested the assistance of the relevant authorities in the executive branch mainly at the central level. Out of the 57 only 5 complaints were resolved. This inefficiency contributes to discredit the parliament. As a consequence, duties of some parliamentarians are transferred to some human rights NGOs considered as more effective by the population.³³

The cultural change from both the politicians and the population is essential for a good and saint fulfilment of the representative function by the parliamentarians. An electoral law that regulates the electoral financing system and the expenses would also help limit the effect of budget availability on the results of the elections. Similarly addressing the issue of responsiveness of the parliamentarians to their constituencies are essential as well. Strengthening the Parliament has to address this cultural issue and the duties of the parliament.

33 Ok Serei Spheak and KIM-YEAT Dararith, “Review and Update of the Baseline Study of Current Practices and Resources of the National Assembly and Senate of Cambodia”, Parliamentary Centre of Canada / Cambodia-Canada Legislative Support Project, (Phnom Penh: 2005) Unpublished Report.

2.2 - The deliberation function (legislative and budget) of the Parliament is important in the Constitution but limited in its practice.

The Constitution confers to the National Assembly and the Senate's legislative power (Articles 90 and 99). This power cannot be transferable to any other organ or individual. This suggests that either the Government or any other institution cannot rule by decree-law or ordinances.³⁴ However, like in all liberal states, the Prime Minister representing the Royal Government can make laws, regulations, rules, orders and decisions that constitute the administrative laws for the implementation of the laws that have already been enacted by the Parliament. They can also propose laws that implement its political platform (Articles 91).

This initiative is even essential for government action. This is the reason why there are more laws initiated by the ROYAL GOVERNMENT OF CAMBODIA than those of the Parliament in the first legislature. The Parliament has initiated only 5 laws out of the 170 adopted so far.

Legislature	First Legislature 1993-1998	Second Legislature 1998-2003	Third Legislature 2004-April 2005	Total
Laws adopted	63	84	21	170
Laws initiated by the ROYAL GOVERNMENT OF CAMBODIA / Projets de loi	61	84	20	165
Laws initiated by the Parliament (NA+Senate) / Proposition de loi	2: - Constitutional amendment of art.28; - Law outlawing the Kampuchea Democratic	2: - HIV/AIDS Law; - (?)	1	5

This imbalance of productivity is explained by several constraints:

- **The support structure is insufficient.**

³⁴ Gaillard Maurice, "Démocratie Cambodgienne, la Constitution du 24 Septembre 1993", L'Harmattan, Paris, 1994, p 99.

The government has 26 ministries, two state secretariats, the Cambodia Development Committee (CDC), the National Bank of Cambodia, and the National Audit Authority with all the administrative apparatus to support its actions. Yet each chamber of parliament has only a General Secretariat and nine commissions, each commission covering several sectors of the line ministries to perform their duties.³⁵ As the result, the commissions are overloaded with laws awaiting the commission debate and hearings, especially during this post conflict period when the Royal Government of Cambodia initiates the Triangular and Rectangular strategies in which the Cambodia's integration to ASEAN and accession to the WTO constitutes one of the main objectives. But adhering to the WTO requires Cambodia to draft and review more than fifty laws, only a few of them were adopted.

- **The lack of technical and legal expertise is tremendous.**

The second constraint is the lack of technical and legal expertises. Many remaining laws to be adopted are very technical such as the Penal Code, Penal Procedure, Civil Code, Civil Procedure, Enterprises Law.... that require technical expertise to understand them well if the Parliamentarians want to shape these laws. While the line ministries have the support of the technical departments of the administration often with the assistance of international experts and the council of jurists; the parliament has to rely only on its legislation, legal research departments and the legal units staffed by general legal advisors supported by only two legal experts, one at each chamber. In such circumstances, it is very difficult for the parliament to initiate laws as they can hardly shape the draft laws proposed by the Royal Government of Cambodia.

- **The lack of time is often preventing the parliament from being effective.**

³⁵ Internal Regulation of the National Assembly adopted on 28 October 1993. The Commissions of the National Assembly consist of

1. Commission of Human Rights and Complaints;
2. Commission of Finance and Bank;
3. Commission of Economics, Planning, Investment, Agriculture, Rural Development and Environment;
4. Commission of Interior, National Defence, Investigation and Anti-corruption;
5. Commission of foreign Affairs, International Co-operation, Propaganda and Information;
6. Commission of Legislation;
7. Commission of Education, Religious Affairs, Culture and Tourism;
8. Commission of Health Care, Social Affairs, Work and Women's Affairs; and
9. Commission of Public Work, Transportation, Telecommunication, Post, Industry, Energy and Commerce.

The third constraint is the time available for the adoption of important laws such the budget law. The time left for the commissions of the National Assembly and the Senate to study the draft laws is often not sufficient especially for important laws often qualified by the Royal Government of Cambodia as urgent. Such qualification requires the law be adopted within five days. The members of parliament feel that this duration is not sufficient especially for complex and technical laws such as the financial and budget laws. They complained that many laws are qualified as urgent and suspected the government uses such procedure as a tactic to ensure a quick and smooth adoption of the financial laws such as the yearly National Budget Law.

The members of parliament feel also that while they do have time to develop their general expertise as politicians, they cannot afford and are not motivated to develop their skills for specific fields and be legislators specialists in specific topics in the post conflict period. This is because being politicians they have to face increasingly heavy agendas while the relevant support staff with legal and technical expertise is still not sufficient in number and in quality to the level that they can rely on, in order to challenge the government experts in the legislative work as well as in the monitoring function.

The Parliament, the National Assembly in particular has recruited additional staff recently but this recruitment answered to the political priority of balancing the political affiliated personnel between Funcinpec and CPP within the institution rather than considering the effective needs of the Parliament. The recruitment itself has not followed the competitive examination that would select the best candidates as required by the Law on the statute of the Civil Servant of the Legislative Body and the Constitutional Council. As a result, the National Assembly has more than 700 staff for 123 deputies but they are still not sufficiently supported.

2.3 - The Parliament is facing increasing challenges in exercising its monitoring function for both political and technical reasons.

The classic theory of the separation of power requires that the executive power, the legislative power and the judiciary power be completely separated and independent from each other. The reality shows that in practice such strict separation of power is not feasible nor wished for in modern democracies because it would paralyse the smooth operation of the governance system: A

government needs to be supported by a majority in Parliament to implement its political platform in a sustainable way without being censured continuously.

This principle of separation of power should no longer be seen as a complete separation between the legislative branch that produces and enacts the laws and the executive branch that implements the laws enacted under the strict surveillance of the former. The classic theory of separation of power seems declining in relevancy because in reality the majority party can dispose of the executive and legislative branch when it wins an important number of seats in the Parliament. This principle is acknowledged in the Cambodian Constitution. Rather, the principle of separation of power in the liberal multi-party regime with its underlying conditions should be analysed in terms of possibilities left to the Parliament to implement the check and balance principle and mechanism; leaving a place open to the opposition to play its role in the national political arena.³⁶

The interviewees find that the parliament could perform its monitoring better if they have sufficient technical support and a greater freedom of actions from their parties.

The Parliament disposes of the legal means to monitor the actions of the Royal Government of Cambodia. The monitoring can be performed at the commission level where the members of the commission invite the members of the government to clarify issues under their responsibilities; and at the plenary session where the ministers or Prime Minister have to answer at the weekly special session expressly reserved for this. The answer can be written or oral within 7 days to the written question previously submitted to the Royal Government of Cambodia.³⁷

In practice, the Royal Government of Cambodia has often neglected the written questions of the members of parliament, who do not have other effective means to pressure the ministers in charge to answer.

Consequently the Royal Government of Cambodia undermines the Parliament, themselves or their leaders who are members of the Parliament; and the Constitution. Furthermore, when they answer positively to the invitations of the commissions, they often send their representatives at the technical level to the hearing of the commissions. While the Internal Rules and Regulations gives the possibility to the minister to send “a personality” on his behalf, the habit of sending the

³⁶ Pactet, “*Institutions Politiques*”, supra note 18, at 114.

³⁷ Chapter IX – Questions and Answers - of the Internal Rules and Regulations of the National Assembly.

representative at the technical level unaccompanied by a representative at the political level contributes to further undermine the standing and the works of the commissions. This contributes to discredit the Parliament vis-à-vis of the population. This practice endangers the liberal parliamentary practice and leaves the observers the possibility to criticize the Royal Government of Cambodia to have rendered the “check and balance” work of the Parliament ineffective.

Similarly, while the Government needs a majority to support its political agenda, the principle of liberal multi-party democracy requires that the opposition party finds its place fully within the Parliament. In this respect, the absence of the members of the opposition at the head of the commissions as well as within the commissions for whatever valid reasons give arguments to the international community to voice their concerns about the effectiveness of the principle of liberal multi-party democracy in the Cambodian parliament.³⁸

Finally, the principle of liberal multi-party democracy suggests that all parties in power as well as in the opposition accept to perform constructively their respective roles and responsibilities within the Parliament. For many interviewees, a systematic boycott of the parliamentary sessions is equivalent to refusing to assume the roles, duties and responsibilities within a democratic forum from an opposition party. For others, boycotting a parliamentary session in order to paralyse the parliamentary work is equivalent to the reject of the principle of liberal multi-party democracy in the Cambodian Parliament.

The refusal to participate to the political activities in the frame of the Parliament can further endanger the democratic process. The adoption of the “problematic” Constitutional law by the majority parties in order to end the political deadlock in July 2004 is one of the illustrations of such a danger caused by extremist attitudes.

2.4 - The New constitutional law adopted on 14 July 2004 limits the selective or nominative function of the Parliament.

³⁸ Letter of the Ambassador Extraordinary and Plenipotentiary of Canada to the President of the National Assembly and Letter of the President of the National Assembly to Ambassador Extraordinary and Plenipotentiary of Canada, online: National Assembly of Cambodia, < <http://www.cambodian-parliament.org/>> (date accessed: March, 2005)

The nominative power of the members of parliament is one of the essential elements of the liberal multiparty democratic regime. The nominative power of the members of parliament deals with two types of nominations: The separated elections of the Chair, Vice-Chairs and Head of the Commissions of each chamber; and the nomination of the Royal Government.

Article 82 of the Constitution requires that a three-step process be adopted for the National Assembly as well as the Senate to take office. The first step consists of the verification of the validity of each member's mandate. Second, once the mandate validated, the members of the parliament must take oath. Third, each chamber elects separately a Chairperson, Vice-Chairpersons and members of each Commission by a 2/3-majority vote in a secret ballot.

This procedure has been adopted with the objective to ensure that the President, Vice-Presidents and Members of each Commission, receives individually a 2/3-majority support from the members of each chamber before taking office. This is to ensure the complete legitimacy and credibility for each candidate. This procedure was strictly followed during the two previous legislatures and it happened that the members of the National Assembly rejected a candidate that did not receive the full support from the members of the National Assembly across party line.

This procedure has not been followed at the third legislature. A contested Constitutional law was signed by the Second Vice-President of the Senate to establish a special procedure called “Package vote” to select the President of the National Assembly, the Vice-Presidents, Chairs and Vice-Chairs of the Commissions and the Royal Government of Cambodia; in one vote by hand rising. The current Standing Committee of the National Assembly and the Royal Government of Cambodia was selected by such procedure on the 14 July 2004.³⁹

The proponent of such a procedure stated that the adopted procedure is not constitutional because it aims to smooth the functioning of state institutions and the formation of the Royal Government in case of political crisis and deadlock.⁴⁰ On the contrary, the opponent qualifies it as a Constitutional coup d’Etat.⁴¹

39 National Assembly document No. 18 ror-sar dated 14 July 2004.

40 Statement of Reason for the National Assembly Plenary Session signed by HE. Mr. Sok An dated 1 July 2004.

41 A coup Against the King, online: Khmer Intelligence, <http://www.khmerintelligence.org/2Q2004.html> (date accessed: March, 2005)

Whether the procedure is Constitutional or not, the “Package Vote” procedure by hand rising empties the National Assembly from its effective selective and nominative powers and the King its designation power as stated in Article 119.

The analysis highlights that as in general “law is an instrument of politics”, in Cambodia an institution such as the Parliament exists to support the political will of the political leadership across the party line. The majority of the interviewees seem to paint a rather global, negative picture of the Parliament: “The political parties and their leaders have been using the Parliament and exploit its “democratic” mechanism to strengthen their respective powers thanks to their patron-client structures surrounding the Parliament. In a way they alienate the Parliament from its real function as a democratic forum, to serve the interest of clans, sometimes not even of parties.”

This would explain that: (i) The Constitution was amended at each political crisis to meet the immediate needs of a political solution without considering the long-term “negative” effects for the nation (The creation of the Senate in 1998 resolved the immediate political crisis but has left important long term impact on the National Budget; The adoption of the “package vote” procedure in July 2004 has a long-term and important effect on the democratic process because its problematic and contestable procedure, etc...); (ii) The Internal Rules and Regulations of the National Assembly were adopted and its General Secretariat were re-organised in such a way to control political parties or party members; (iii) The legislative mechanism established lately results in the exclusion of the opposition from the substantial work of the National Assembly ...and (iv) The political parties leaders are willing to accept a weak personnel in the administrations, due mainly to a recruitment mode based on the political equation, than contesting this mode of recruitment...etc...

These practices discredit the Parliament and the parliamentarians’ vis-à-vis the population who prefer to rely on the NGOs to defend their interests rather than on its own state institution.

However, this pessimistic point of views should not hide the tremendous progress that has been made since the 1993 election. Further, it should not undermine the potential offered by the Parliament in striving toward a more democratic and effective institution.

Section II - Factors favouring the adjustment of the current Parliament to the liberal parliamentary culture defined in the Constitution.

The Parliament leaders as well as those of the executive branch see the interests of having democratic institutions otherwise they would not openly accept the international assistance programs from different philosophic and ideological backgrounds to operate freely. They welcome such assistances and often participate in the steering committee of such assistance programmes. Even if most of the time, their participation is rather passive their openness constitutes the key condition that permits the internal and external favourable factors for the democratization process.

1 - The internal factors that favour the democratization process come from the Members of Parliament and their staff.

Cambodia has been learning and experiencing liberal democracy for more than a decade. While the democratic process needs to be further consolidated, the experience learned inevitably impacts on members of parliament, who individually express wishes to be able to play a more active role as parliamentarians.

Indeed, the majority of the members of parliament interviewed so far are in favour of a political and electoral system that would allow them to be more accountable to their constituents rather than to their political leaders and party. They have expressed wishes to be able to be more independent from their party in particular when exercising their representative, selective and nominative functions.

Similarly, the monitoring function appears crucial to them and they wish they could play a more active role in monitoring the actions of the government. In this aspect, the Constitution requires that the international agreements that have long terms consequences on Cambodia such as loans etc...be submitted to the prior approval of the Parliament. According to many of them, long-term economic and land concessions accorded to private international and national concessionaires by

the Royal Government should also be submitted for their approval even if there is no specific Constitutional requirement for this.

In the past, there have been measures from parliamentarians to take a political stand that is different from the party line. Their authors were either expelled from the party or withdrew from their parliamentary seat or from both.⁴² While there are more and more debates and contestations within the political parties present in the Parliament, the members of parliament, the party cadres and the party leaders have learned to limit their respective actions from past experiences. They have gained a certain level of political maturity: In the recent past, the conflicts among them were resolved by internal debates, political pressures and lawsuits rather than by immediate recourse to armed forces. The armed force pressure came only as a last resource. This definitely is the heritage of the democratic process experienced since 1993.

Taking into consideration the limit of their political actions and the constraints of the patron-client system, the members of parliament have developed strategies to allow them to perform their parliamentary functions by focusing their work on social and humanitarian issues where large consensus across party line can be easily obtained. They organise themselves around associations such the Association of Women Senators and claim and obtain a budget to conduct their social actions.

Similarly, the race to get public support would also oblige the parliamentarians to review their strategy in performing their representative functions. They have to learn how to balance their functions as representatives of their constituents with that of their party. They will have to improve their performance in responding to their constituencies' expectations in order to regain their individual political credibility.

The tolerance of free media is also an indicator of democratic process. It should be underlined that the Royal Government of Cambodia has a "real political will" to support the free public access to media. This observation may be more reserved when it comes to the political party access to mass media instruments such as the establishment of a radio or television stations. While the state and political affiliated media (television, radio, newspapers, website...) rather adopt a propaganda style of media, the private international media are allowed to operate freely

42 Crouzatier, "Affaire Sam Rainsy", supra note 27.

when they do not generate a problem of public order. The possibility to access the media is an important advantage for the democratic process; and the democratic strengthening programmes should further exploit this openness.

These developments represent definitively the positive factors and are the constituting elements of the liberal parliamentary culture. This culture could not have been developed if the Cambodian politicians and Cambodian society have not been exposed to the liberal democratic culture either by a sustainable assistance programme or the media.

2 - External factors that stimulate the liberal Parliamentary culture are from the international assistance of democratic countries and the media.

As mentioned earlier, to face the human resources and budgetary constraints, the parliamentarians adopted a strategy, which requests the assistance of international organisations or NGOs. These assistances could be divided into three kinds: The assistance for equipment and buildings, capacity building and on the “political and ideological” focus.

The first type of assistance focuses mainly on the supply of equipment and building. The European Union (building for the Commission of Human Rights and Reception of Complaints), China (Building at the Senate and for the Commissions at the NA), the Asia Foundation and France (renovation of the National Library) and have provided such assistance during the First and Second legislature. The financial provisions are budgeted to contribute to the physical means for the Parliament to operate. The rationale is that if the Parliament were better equipped, it would be more organised and could perform better work. This is verified with the Senate where the Senators and staff really appreciate their working environment and acknowledge that the facilities available to them at the Senate contribute to their good image at least vis-à-vis of the international community.

However, the availability of equipment and building alone is not enough to render institutions useful and efficient. They need the human resources as well the genuine political will from political leaders.

The second type of assistance focuses on the technical capacity building of the members of parliament and their staff. The Asia Foundation, the World Bank, the Inter-Parliamentary Union, the United Nations Development Program (UNDP), Konrad Adenauer Foundation and the Canada-Cambodia Legislative Project (CCLSP) – Canada International Development Agency (CIDA) have provided assistances to the National Assembly and the Senate for years. These capacity building programmes have been focusing on the general legal and administrative knowledge and techniques. Their activities are training courses, seminars, workshops and on job trainings provided by the foreign technical assistants in legal and administrative fields assisted by senior national legal experts. Until recently, these supports focused mainly on capacity building of legal and administrative skills; as well as on direct legal drafting and advice.

However, there is growing awareness that the capacity building projects that focus mainly on the technical aspects have their limits in favouring, influencing and accelerating the democratization process in the Parliament as well as in the executive branch. There is a need to stimulate the reflection on the utility of democratic institutions with effective democratic and governance operating systems among the members of the parliament, of the executive branch and of the parties' cadres.

This awareness results in a new trend of programmes that combine both the technical capacity building focus projects and the democratization strengthening focus projects. The United Nations Development Program, the Canada-Cambodia Legislative Project (CCLPS- Parliamentary Centre of Canada) and the Konrad Adenauer Foundation have been experiencing such programmes within the Parliament. They combine training courses, seminars, workshops and on job trainings with the study tours for the members of Parliament and seniors secretariat staff for them to discover the parliamentary practices in other liberal democracies (Canada, Germany, France...) and to exchange their experiences.

In parallel, some NGOs such as the National Democratic Institute, the International Republican Institute... work directly with the political parties outside the Parliament frame to inform the participants about the usefulness of a democratic regime and help the members of parliament to perform their representative functions in an active manner through direct dialogue organised by those NGOs.⁴³ This method has the advantage of stimulating the members of parliament to

43 National Democratic Institute, "Constituency Dialogue Programme: Working to strengthen and expand democracy worldwide", Brochure.

exercise more actively their representative function by relieving them from the financial constraints of the organisation costs and in particular the costs of gifts, which are very dissuasive for them.

In particular this approach contributes to the cultural change for both sides the politicians and the population: It would be correct what we call the “Red Cross duty-eviction” by the members of parliament and of the executive branch. This correction will allow them to refocus their attention on their core functions, which cannot be legally performed by the Red Cross agents or any others, rather than performing the work of the Red Cross. It would also limit the effectiveness of vote buying or support buying whether during the electoral or not.

Such programmes within and outside the Parliament are appreciated by the leaders of the Parliament but also by those who are not members of the Parliament. It was reported that the CPP at the highest level are very demanding for the activities that expose them to the liberal culture, which they are not very familiar with due to their personnel background close to the former communist regime.

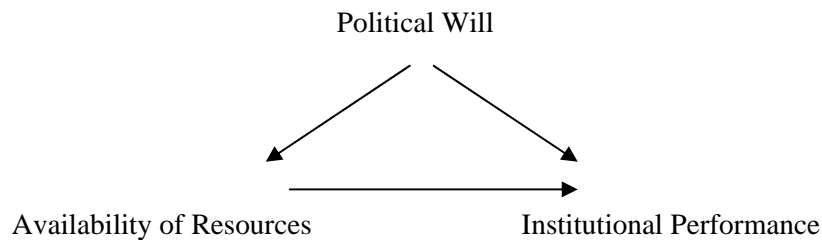
Their openness must be highlighted and encouraged because it represents an entry point for the preparation for and building up of the liberal parliamentary culture directly from within the political parties. However precautions shall be taken to insure that such programmes are not perceived as threatening the powers in place by intervening in the internal affairs of the parties or the country. This perception might put an end to such programmes.

3 - Reflection on the needs of external assistance helps support the adjustment of the Cambodian Parliament to a liberal parliamentary culture.

The reflection on the needs of the external assistance is based on three elements: Past experiences, the realities of Cambodian society and the need of the Cambodian Parliament. However the presentation below will be rather issue based approach.

- **The current evolution is from projects with a focus on technical capacity building to projects with a focus on strengthening the democratization.**

The new trend of programmes that combine both the democratization strengthening focus projects and the technical capacity building focus projects seems the most appropriated to contribute to building up an effective liberal parliamentarian culture within the Cambodian Parliament. This is because there is a close triangular causality between the effective political will, the resources available and the institutional performance.



In the past, international assistance was articulated mainly by the rationale of the direct causality (Availability of resources and expertise → institutional performance): The parliamentarians would exercise their functions properly if supported by competent and well-managed staff. This logic along with the “unwillingness” to engage in a more sensitive and “problematic approach”, which can be contested by the principle of non-interference in the internal affairs of a country, explains why international assistance programmes have focussed mainly on capacity building (technical and management expertise); and the supply of technical assistance, equipment and building of the Parliament.

Nevertheless, this logic however valid it is, raises the issue of efficiency and effectiveness of the assistance programmes at the output and impact levels, which in reality are the main interests of the “democracy strengthening” programmes.

While these assistance programmes have globally reached their respective objectives of providing the Parliament a certain technical capability -through the capacity building of their staff and the supply of technical assistance and equipment and building- to exercise their functions, they hardly obtained important outputs and impacts on the Parliament and their political leaders.

This is because these programmes have neglected to deal with or to focus on the issue of “genuine political will” of the political leaders within the Parliament to support the democratic process.

The Parliament is a political institution unlike the agriculture departments or the mine action centres. Therefore strengthening the Cambodian Parliament suggests that the assistance programmes engage, in priority, in activities with the Parliamentarians and its political leaders in particular, to ensure or influence their genuine political will to permit the Parliament to exercise effectively their roles and functions as defined in their Constitution. In other words, strengthening the rule of law and the democratization process become the primary objectives (and no longer at the impact level) and activities are to be designed to target this primary objective. Thus it was suggested that the activities, which expose the Parliamentarians and its political leaders in particular, to the liberal multiparty culture are to be prioritised. They are to be complemented by the activities building the capacity of the support staff and advisors.

This suggestion is made in consideration of the importance of the “local/underground realities”: post-conflict society and its culture of violence, formal and informal power, client-patron system and pyramidal society.

The pyramidal structure characterizing the Cambodian society along with its recent past heritage of communist regime and its “military way of life” results in the fact that the decisions and responsibilities are articulated in a “binary” functional mode (number one or number zero) at all levels. This means concretely that there is no genuine delegation of power from the top; and no incentive or motivation for the subordinates to take decisions and assume responsibilities. The number ones decide and assume their responsibilities; and the others are number zero, they don’t really exist or exist to follow orders.

The direct consequence of this “binary” functional mode for the implementation of programmes is that either the “real” chief (political leaders, parliamentarians) has a genuine political will to support the democratic process and take the political decision to support the democratization strengthening programmes, and such programmes will move forward effectively; or nobody else dares to assume the responsibility of such a decision despite their personnel willingness and the

project will surely survive⁴⁴ but inefficiently. This observation is valid for the decisions of a technical nature in relation with a small project such as printing the National Budget law and distributing it to the interested stakeholders; it is further pertinent and accurate for the decisions dealing with the political orientation such as supporting the democratization strengthening programmes.

The “genuine political will” towards a liberal democratic process in Cambodia should not be appreciated only in the national context when designing the democracy strengthening programmes. The “genuine political will” of the donors should be analysed as well. They are as important as those of the Cambodian political leaders. This is because international assistance has never been absolutely neutral. International assistance has always been instruments of a specific agenda for donors. This agenda can be political such as supporting the liberal ideology or economic such as supporting the donors home industries with the obligation to purchase goods and services originated from the donors countries. The provision on this latter obligation can be found in almost all the donors-Royal Government of Cambodia financial agreements.

When applying this “agenda principle” of international assistance and putting it in the current South East Asian geopolitical context, we wonder to what extent the international assistance to the Cambodian Parliament and the Royal Government of Cambodia (Ex.: Chinese’s assistance) or the international direct and exclusive assistances to NGOs (Ex.: The USA’s assistance) carry effectively or the “genuine political will” to support the democratic process for the benefit of Cambodia? What would be the efficiency of those assistances and the benefits for Cambodia when those international assistances have different agenda, carrying opposed “genuine political will”, serving respective interests of the different donors, which are sometime different from the interests of Cambodia?

Concretely, without getting into too much detail, it seems clear through the interviews conducted that China has an agenda to play a bigger role in Cambodia. This can be appreciated through their civil and military assistances, the pattern of their investments and Chinese immigration. The possible hypothesis or interpretation given to this pattern is that China wants Cambodia to adopt a similar system of governance: Tight political control –thus on the opposition- with free market, wide economic openness. This is the best way to have Cambodia under its influence in the

⁴⁴ This is because it is not in the nature of a Cambodian to say clearly no to an assistance programme but the programme will certainly not get any support needed.

geopolitical context of the region; but this does not mean helping to strengthen the Cambodian Parliament, which is responsible for implement the liberal multiparty 1993 Constitution.

Similarly, what are the US Senate intention when it forbidden the direct assistance to Cambodia's state institutions? For many Cambodians, refusing to work directly with the members of parliament and the executive branch elected democratically raise some concerns about the effective willingness, "genuine political will" of the US towards liberal democracy in Cambodia. Would the real US interests be an effective democracy in Cambodia or the collapse of a government that the US government has never really supported because it does not caution the US strategy in the South East Asia geopolitical landscape?

Whatever the reasons that motivate the "bilateral" international assistance –which characterize the majority of the assistance to the Cambodian Parliament-, there is an urgent need to reflect on the objectives, "genuine political will" of international assistance and the modality of such assistances to avoid duplication but also contradiction thus inefficiency and failure.

The observations mentioned above place the "genuine political will" of the "real" Cambodian leaders and the donors as an essential condition for the success of the democratization strengthening programmes. Such affirmations call for a further and broader reflection on the types of intervention or assistance (the democratization strengthening focus projects, the technical capacity building focus projects; bilateral and multilateral assistance, direct or indirect) and the way to make them operate efficiently. This reflection is far beyond the objective of this paper and requires more consultations and debates, which is rather the object of the UNDP-BDP's Global Parliamentary Strengthening Programme.

- **It is important to have a systemic and coordinated approach beyond the programmes within the Parliament.**

As mentioned earlier, the Parliament, at least a liberal democratic parliament, is not an institution that is completely separated from its people since it is the forum where the people's representatives from all horizons come to defend the interests of the nation. However, the

constraints of the modern system of governance and the electoral system have slightly alienated the Parliament from its electors. The Cambodian Parliament does not escape from this pattern.

This observation suggests among other things, the problems that society is facing outside the Parliament are debated in the Parliament; but it also means that the Parliament itself is facing similar problems or that its current composition and its functioning mode is the consequence of such problems that are the culture of violence, the heritage of the communist regime and its “military way of life”, the patron-client system, the formal and informal structure of power, the shadow system of governance and the issue of civil servant’s neutrality, the irrational management system and the “binary” functional mode of decision etc...

In this context, it seems necessary that the assistance programmes, all programmes that aim to strengthen the democratic Parliament adopt a systemic and coordinated approach to ensure that all constituencies (Constituents + MG, Civil Servants...) of the parliament understand (then accept and effectively implement) the concept of a liberal parliamentary culture and its implications. This implies that assistance programmes focus on both the “offer” and “demand” sides of democracy and are designed to integrate activities (i) Ensuring that members of parliament (and party leaders in particular) are well aware of, clearly understand and accept to assume their role, responsibilities, competences and prerogatives as members of parliament in a liberal regime; (ii) Ensuring that the members of the executive branch understand the role and prerogative of the Parliament and respect it; (iii) Correcting the wrong perception or understanding the parliamentarians’ role by the general population in particular those living in rural areas who represent more than 80% of the population; (iv) Rendering the Secretariat more neutral and efficient to effectively support the work of the members of parliament.

In the context of mass-formation or mass-information, the role of the media and media-training organisation should not be neglected as vehicles of such formation or information on the role of the liberal multiparty parliament. Similarly, exposing the political leaders to the liberal parliamentary culture suggests stimulating the exchanges initiatives with others Parliaments having long experience with the democratic process such as those of the European Unions, the European Unions’ member states, Canada and the States.

Finally in the broader context of assistance, not only is it important to consider the reality surrounding the Parliament but also taking into account the needs of the Parliament is further essential.

- What are the effective needs of the Parliament?

The needs of the Parliament are an essential element. Often these needs were taken into consideration at a specific moment but its evolution has often been neglected. This is often due to the administrative constraints (strategic and work plan approval procedure, expert identification and recruitment process, financial and disbursement procedure...) of the donors' institutions themselves that is too heavy to be able to adjust quickly to the immediate needs of the Parliament. For example, the Parliament is working on the draft law (enterprise...), draft codes (Civil, Penal, Procedures...) and desperately needs legal specialists for these specific fields of law to assist them exercising their legislative function. Their needs have not been met yet.

Without being exhaustive concerning this issue, in general, the Cambodian parliament needs specific legal specialists in the fields of law currently on the agenda of the parliament to advise them either on drafting laws or on amending the draft laws proposed by the Royal Government of Cambodia.

In addition to the existing programme, suggestions were made to the international assistance programmes to provide short-term legal specialists on the field of laws that the Royal Government of Cambodia intends to submit to the Parliament for adoption. . These specialists should have the double tasks of providing legal assistance on their field of expertise to the parliamentarians and to provide on-the-job training to the parliamentary legal advisors in these specific fields. If these specialists don't speak Khmer, they must be assisted by the Cambodian legal advisors speaking the languages used by the specialists so that training is fully accessible to Cambodian legal advisors of the Parliament. This process can help the parliamentarians effectively shape the legislative work in a sustainable way. In this respect, the language criteria in the design of the project should be as important as the qualification and expertise of the specialists themselves.

Similarly, there is a crucial need to strengthening the management of the Parliament, the National Assembly in particular in order to render the financial and human resource management efficient and effective. However it must be underlined that the improvement cannot be obtained without the genuine political will of political leaders.

The technical capacities built and preserved within the Parliament have not been used effectively due to political reasons but also to a lack of proper resource management. Besides the political reasons that often are beyond the capacity of the assistance programme to intervene, it seems that the management capacity building, which is a technical element could be provided to key persons that genuinely want to improve the work of the General Secretariat and render the issue of neutrality of civil servant less stringent than the present situation.

Finally, the turn over issue should also be addressed. The technical capacity built is not lost per say but it has been either not effectively used within the institution or deviated to serve other institutions such as NGOs or the private sector when staff who has received training either leave the Parliament or work part-time in other more lucrative sectors. While the turn over is low, many staff work part-time out of the Parliament to get additional salary for their living. This problem raises the general issue of insufficient salary for the civil servant to make a respectable living. It must be noted that the Parliamentary civil servants receive a higher remuneration than their colleagues in the executive branch but the amount is still not sufficient to have a correct living.

CONCLUSION

The “realities” and cultural elements are crucial in a post conflict society because the society is familiar with the culture of violence characterising its recent past. In the case of Cambodia, the weight of the pyramidal society goes far beyond the war period and is one of the characteristics of its traditional culture. This implies that no decision can be made or no successful result can be expected from a decision without the effective support of the formal and non-formal but effective leadership. Adjusting the Cambodian Parliament to a liberal parliamentary culture requires giving prime consideration to the Cambodian post-conflict factors that encompass its political and institutional structure; and its recent heritage.

Similarly, the choice of type of intervention should be carefully considered depending on the “underground realities” and cultural elements. In the case of Cambodia, the “underground realities” and cultural elements call for the programmes that combine both the democratisation strengthening focus projects and the technical capacity building focus projects. However in order to build up efficiently and effectively the liberal parliamentary culture within the Cambodian Parliament the emphasis should be given to the democratisation strengthening focus projects with the indispensable complement of the latter. This is because the utmost importance of the “genuine political will” of both the donors and beneficiaries countries in democracy oriented programmes.

Finally, the issue of modality and coordination of the assistance programmes should also be seriously thought through to avoid fragmented programmes, duplication and competition among donors to response to their respective donors’ agenda instead of those of the beneficiary. Strengthening the democratic Parliament in Cambodia requires the donors and Cambodians to adopt a systemic and coordinated approach to meet the weaknesses and shortage of both the “offer” and “demand” sides of democracy, on the understanding of a democratic governance system and its underlying requirements.