



DEATH KNELL FOR DEMOCRACY



Attacks on Lawmakers and the Threat to Cambodia's Institutions



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Cover Photos (from top): Police gather outside the Cambodia National Rescue Party headquarters in August 2016, Phnom Penh (Source: CNRP); The Cambodian National Assembly in session in December 2016 (Source: CNRP); Protesters beat opposition MPs outside the National Assembly, October 2015 (Source: YouTube/Facebook)

CONTENTS

Acronyms	4
Executive Summary	5
I. Introduction	8
II. Political Context	9
III. Judicial Attacks	12
IV. Legislative Attacks and Procedural Violations	25
V. Climate of Fear	34
VI. Conclusion	38
Annex I: An Analysis of Parliamentary Immunity	41

Annex II: Case Timelines

A set of timelines associated with the lawmakers referenced in this report is available at: aseanmp.org/cambodia-mps-report/

ACRONYMS

Cambodia National Rescue Party	CNRP
Cambodian Human Rights and Development Association	ADHOC
Cambodian League for the Promotion and Defense of Human Rights	LICADHO
Cambodian People's Party	CPP
Federal Bureau of Investigation	FBI
Front uni national pour un Cambodge indépendant, neutre, pacifique et coopératif	Funcinpec
Human Rights Party	HRP
Inter-Parliamentary Union	IPU
Law on the Election of Members to the National Assembly	LEMNA
Law on Political Parties	LPP
Law on the Status of National Assembly Members	LSNAM
Law on the Status of Senate Members	LSSM
Member of Parliament	MP
National Election Committee	NEC
Non-Governmental Organization	NGO
Office of the High Commissioner for Human Rights	OHCHR
Sam Rainsy Party	SRP
United Nations	UN
United Nations Development Program	UNDP
United States Dollar	USD

EXECUTIVE SUMMARY

In February 2017, Cambodia's Parliament approved a set of new amendments to the Law on Political Parties, which grant unprecedented powers to the executive and judicial branches to suspend and dissolve political parties. The move was the culmination of an ongoing effort to undermine the capacity of the political opposition in Cambodia, which has been characterized by nearly two years of escalating persecution of Cambodian parliamentarians.

The phenomenon in Cambodia resembles threats to opposition voices elsewhere in Southeast Asia, but it is particularly acute. Since July 2014, at least 17 Cambodian legislators from the National Assembly and the Senate have been direct victims of harassment and attacks, both judicial and physical, in the context of a widening crackdown by the ruling Cambodian People's Party (CPP). While opposition parliamentarians have consistently faced threats and prosecution since the advent of the modern political period in Cambodia in the early 1990s, the most recent wave of attacks represents a significant escalation of politically motivated persecution through the use of the judiciary and the legislature itself.

The groundwork was laid following the 2013 national election, in which the CPP lost its super-majority in the National Assembly. Following the breakdown of a newly established "culture of dialogue" between the ruling party and the opposition in mid-2015, attacks against lawmakers from the opposition Cambodia National Rescue Party (CNRP) intensified. Given the transformed political dynamics, however, the CPP's tactics have increasingly threatened not only the safety of opposition parliamentarians, but the credibility and effectiveness of democratic institutions themselves, including the capacity of the Parliament to serve its legislative, representative, and oversight roles.

The wave of persecution, leading up to the passage of the amendments to the Law on Political Parties, has encompassed three broad areas: 1) politically motivated court cases and charges against opposition lawmakers and the threat of additional judicial prosecutions; 2) violations of procedure in the National Assembly, which, in particular, have eroded parliamentary immunity protections afforded in the Cambodian constitution; and 3) threats, intimidation, and orchestrated physical violence, which have contributed to a climate of fear among opposition voices in government and civil society.



The Cambodian National Assembly, Phnom Penh (Source: CNRP)

Judicial Attacks

In the past three years, 15 parliamentarians have found themselves the victims of criminal charges and court proceedings, which collectively constitute an unprecedented judicial attack on the Cambodian opposition. Two lawmakers have been jailed, two are currently in exile having been convicted on criminal charges, and one was convicted and spent more than six months under effective house arrest in order to avoid imprisonment in 2016. Meanwhile, at least eight others have seen their cases put on hold, but not dropped, leaving the charges – which could be revived at any time – as threats hanging over their heads.

The cases reveal deep flaws in the judicial system, which lacks independence and remains heavily influenced by the executive branch. Their nature, as well as the manner in which they have been raised, investigated, and prosecuted, leaves little doubt as to their political motivations. The vagueness of relevant legal statutes, including those relating to so-called “flagrant” offenses, facilitates their abuse by the authorities and the ruling party.

Cases that have been pursued against opposition MPs generally fall into two categories: 1) lawmakers that have raised sensitive political issues or are perceived by the CPP as being overly critical, and 2) politicians that pose a threat to the CPP due to their popularity, visibility, and influence. The arbitrary and plainly political nature of the charges brought against individual parliamentarians, as well as the prevalence of outstanding charges, puts a large number of lawmakers at risk and leads to self-censorship and an overall undermining of the opposition’s ability to effectively fulfill its parliamentary functions.

Legislative Attacks and Procedural Violations

As the judiciary has pursued politically motivated cases against opposition lawmakers, the Parliament itself has failed to defend its members from these attacks. The Cambodian Constitution, along with other statutes, affords legislators immunity from prosecution.

The lifting of this immunity requires a two-thirds majority vote of the relevant legislative chamber, which in the past, the CPP was able to obtain easily. Following the 2013 elections, however, the CPP no longer maintained a super-majority in the National Assembly and therefore moved into uncharted territory in its efforts to allow for the prosecution of opposition MPs. In particular, authorities have relied on the use of the so-called “*flagrante delicto*” clause, which allows for the arrest and prosecution of MPs in cases where the alleged offenders are caught in the act of committing a crime. Vague legislation and creative interpretations of relevant laws by an overly zealous, politicized judiciary have been facilitated by the National Assembly’s violation of the procedures regarding these cases – in particular its failure to lift immunity while ostensibly authorizing cases to proceed.

Parliamentary immunity exists as a bulwark against politically motivated actions by an executive and politicized judiciary. Yet as a result of its actions, the Cambodian Parliament has aided and abetted efforts by the executive and judicial branches to harass opposition parliamentarians and severely undercut both the immunity protections afforded by Cambodian law and the space available for the opposition to fulfill its duties.

Other actions by the Parliament have contravened existing regulations and twisted provisions in order to undermine the opposition. These actions, including stripping CNRP leaders of titles and positions without legal basis, threaten opportunities for inter-party dialogue and effective parliamentary oversight of executive functions.

The Parliament’s passage of amendments to the Law on Political Parties in February 2017, which followed changes made to the National Assembly’s internal regulations in January eliminating the majority and minority groups in Parliament, demonstrate the extent to which the CPP-controlled

legislature acts as a rubber stamp for the executive branch. Through these moves, which cripple the opposition's capacity to engage and speak out, the Cambodian Parliament has hindered successful dialogue and debate and threatened the existence of the CNRP.

Climate of Fear

Parliamentarians have been victims of physical attacks – prominently in October 2015 when two CNRP MPs were brutally beaten by a pro-government mob outside the National Assembly – as well as verbal and online threats from CPP leaders, members, and supporters, and other forms of intimidation. These attacks and threats produce a climate of fear that reinforces the danger posed to opposition MPs and undermines their security and capacity to carry out their roles. Though such threats are not a new feature of Cambodian politics, the escalation of such harassment – both in its frequency and its severity, as evidenced by the beatings – has been a particularly concerning development in the past several years. This climate of fear has also impacted other sectors, including civil society, whose members have been targeted in the context of investigations into MPs.



The Cambodia National Rescue Party (CNRP) headquarters, Phnom Penh (Source: ACHR)

It is becoming increasingly clear that the ruling party's efforts to cripple the opposition, in advance of critical commune-level and national elections in 2017 and 2018 respectively, are undermining the fundamental functions and institutions of democratic governance. In the CPP's haste to ensure that the opposition remains unable to effectively challenge its rule in upcoming electoral contests, it has dispensed with adherence to proper procedures and relied heavily on a politicized judicial system, a pliant legislature, and violent mobs to carry out its goals – actions which threaten the system itself and make reform an ever more distant possibility. Addressing persecution and threats against lawmakers, including through revision and clarification of relevant statutes and efforts to ensure all actors adhere to the law, must therefore be a priority for all parties interested in stability, prosperity, and accountability in Cambodia.

I. INTRODUCTION

Cambodian democracy is being systematically dismantled. The passage of new amendments in February 2017 to the Law on Political Parties, which grant unprecedented powers to the executive and judicial branches to suspend and dissolve parties, represented the culmination of an ongoing effort to undermine the capacity of the political opposition. Over the course of the past two years, an assault on free expression, dissent, and opposition by the ruling Cambodian People's Party (CPP) has targeted nearly all segments of Cambodian political life.

A central feature of this assault has been the persecution of members of the Cambodian National Assembly and Senate. Through the politicized deployment of the judiciary, abetted by a parliamentary leadership eager to bend the rules and act as a rubber stamp for the executive, and strengthened by the creation of a climate of fear through threats, intimidation, and physical violence, the CPP has targeted, harassed, and abused opposition parliamentarians. While members of Parliament (MPs) have faced similar threats and judicial proceedings for years, the series of incidents beginning in mid-2015, which followed the collapse of a so-called "culture of dialogue" between the ruling party and the elected opposition, constitutes a unique emerging threat to Cambodia's institutions and fragile political space.

The aftermath of the 2013 national election, in which the CPP retained a slight majority of seats in the National Assembly but lost the commanding majority it had enjoyed for over a decade, shifted the political dynamics in Parliament and the country as a whole. As a result of the political changes and the new climate, the CPP has increasingly relied on its control over the judiciary, along with flexible interpretations of statutes on parliamentary procedure and immunity, in order to maintain its hold on power. These decisions have undermined the Cambodian Parliament as an institution in increasingly damaging ways.

The phenomenon in Cambodia resembles threats to opposition voices elsewhere in Southeast Asia, but it is particularly acute.

The phenomenon in Cambodia resembles threats to opposition voices elsewhere in Southeast Asia, but it is particularly acute. At least 17 opposition parliamentarians, out of 66 in the National Assembly and Senate combined, have been direct victims of harassment and attacks – judicial or physical – while many more face looming threats in an unpredictable and hostile political climate. As national elections in July 2018 near, the ruling party has ramped up its attacks, seeking to cement its position and assure an election victory.

Among the roles of a legislature, including opposition members, is to serve as a check on executive power, providing a valuable oversight mechanism to prevent abuse. But Cambodia's Parliament has been rendered unable to fulfill this role as a result of a multi-pronged campaign by the ruling party, which – while focused specifically on undermining the opposition – has had the effect of weakening the institution as a whole.

The complexities and convoluted nature of the CPP's multi-faceted effort threatens to obscure a more comprehensive understanding of its scope and implications. This report aims to close that gap by detailing the actions and threats against opposition lawmakers in Cambodia – as well as their causes and likely effects – demonstrating the politicization of institutions at all levels and the alarming lengths to which the CPP is willing to go to remain in power.

Following an overview of the political context behind the most recent set of attacks, the report proceeds to outline the three chief mechanisms of the ruling party's effort: judicial harassment of parliamentarians; actions by the Parliament itself, including procedural violations and the rubber stamping of politically motivated legislation; and the creation of a climate of fear in the country, which threatens parliamentarians' safety and capacities. The report concludes with an assessment of the implications of these attacks and recommendations for how to protect the rights of MPs and strengthen the Parliament as an institution.

II. POLITICAL CONTEXT

Recent events indicate a drastic deterioration in the government's apparent respect for multiparty competition, including unprecedented steps to limit the space for opposition voices and parties. Nevertheless, the current wave of attacks and threats against parliamentarians in Cambodia is not an entirely new phenomenon. Its roots lie in a decades-long history of the ruling party's use of a vast array of tools to crack down on any opposition and criticism it receives, which can be traced back to the beginning of the current era of Cambodian politics in the early 1990s.

In the years immediately following the 1991 Paris Peace Agreement, which paved the way for the country's first free and fair elections in 1993, the CPP relied heavily on violent means to target political rivals and strengthen its hold on power. A prominent example occurred at the end of March 1997, when four grenades were thrown into a crowd of about 200 supporters of opposition politician Sam Rainsy¹ and his Khmer Nation Party, killing 16 people and injuring more than a hundred. Although the government to this day maintains it was not involved, multiple witnesses at the scene said that Prime Minister Hun Sen's personal bodyguard unit, which had been deployed in full riot gear at the demonstration, not only failed to stop the attack but even opened their lines to allow the attackers through to escape. To this day, no investigation – aside from an US Federal Bureau of Investigation (FBI) investigation, which found evidence that government officials were responsible – has been undertaken and no one has been held responsible.²

¹ Sam Rainsy just a few years earlier had been removed as Finance Minister, kicked out of the royalist Funcinpec party and stripped of his parliamentary seat, allegedly for being too vocal regarding corruption issues in the coalition government. He formed the Khmer Nation Party in 1995, which was renamed to the Sam Rainsy Party (SRP) before the 1998 elections.

² Human Rights Watch, "Cambodia: 1997 Grenade Attack on Opposition Still Unpunished" 30 March 2009, <https://www.hrw.org/news/2009/03/30/cambodia-1997-grenade-attack-opposition-still-unpunished>.

What followed the grenade attack was a marked increase in police and military forces patrolling the streets of Phnom Penh and providing security for high-ranking officials of both the CPP and the royalist Funcinpec party, with whom the CPP had been sharing power since the contested 1993 elections. Prime Minister Hun Sen's intentions – to ensure that only the CPP controlled government – were increasingly clear: by early July 1997, CPP forces had taken control of Funcinpec's headquarters, as well as the house of co-Prime Minister and head of Funcinpec Prince Ranariddh. Soon after, the latter fled the country for France, where he stayed in exile until March of the following year,³ and Hun Sen remained as the sole Prime Minister – a position he continues to hold to this day.⁴

Following the 2003 national election, in which the CPP won a commanding parliamentary majority and cemented its position in power, its tactics shifted from more direct violence to the subtler use of the organs of the state to target a much weaker opposition cohort. Opposition leader Sam Rainsy was the target of six lawsuits from 2004 to 2013: two defamation lawsuits filed by Prime Minister Hun Sen and Prince Ranariddh in 2004, for which he was convicted in 2005; a defamation and disinformation suit filed by Foreign Minister Hor Namhong in 2008, for which he was convicted in 2011 and sentenced to two years in prison; a defamation suit filed by Prime Minister Hun Sen in February 2009, for which he was convicted and forced to pay a fine a month later; an incitement to discrimination and destruction of property suit filed in November 2009, for which he was convicted and sentenced to two years in prison; and a disinformation and forgery of public document suit filed in March 2010, for which he was convicted and sentenced to ten years in prison.⁵

Several other high profile cases were brought up during those years, including 2009 defamation suits against lawmakers Mu Sochua and Ho Vann – at the time MPs for the Sam Rainsy Party (SRP). Although Ho Vann was acquitted in September 2009,⁶ Mu Sochua was not so lucky. In August 2009, she was found guilty of defamation, after her own case of defamation against Prime Minister Hun Sen – filed after he referred to her as “*cheung klang*” (a derogatory work in Khmer meaning “strong legs”) in a speech – was dismissed by the court.⁷ The court fined her 8.5 million riels (2,125 USD) in fines and 8 million riels (2,000 USD) in compensation to the Prime Minister – fines she refused to pay and which were eventually deducted from her National Assembly salary after a vote.⁸ These cases indicated a clear move away from more direct, physical violence against the opposition, and a move towards the increased use of judicial means to silence and undermine opposition members.

By the time the 2013 national election appeared on the horizon, the situation for the political opposition was increasingly tenuous. In 2012, Sam Rainsy's SRP and Kem Sokha's Human Rights Party (HRP) merged to become the Cambodia National Rescue Party (CNRP)⁹ in a bid to secure sufficient votes to gain a greater voice in Parliament. Although Sam Rainsy had been living in self-imposed exile in France since October 2009, he was granted a royal pardon just two weeks before the elections, allowing him to return to Cambodia at the last minute.

3 For more background on the 1997 coup, see Human Rights Watch, “July 1997: Shock and Aftermath,” 27 July 2007, <https://www.hrw.org/news/2007/07/27/cambodia-july-1997-shock-and-aftermath>.

4 It is important to note that, although there was no protracted fighting between different factions, the coup was far from bloodless. In a 2012 report, Human Rights Watch reported that the figure of Funcinpec-affiliated officials executed after the 1997 coup stood at almost 100. Human Rights Watch, “*Tell Them That I Want to Kill Them*”: Two Decades of Impunity in Hun Sen's Cambodia (13 November 2012), <https://www.hrw.org/report/2012/11/13/tell-them-i-want-kill-them/two-decades-impunity-hun-sens-cambodia>.

5 See the Sam Rainsy timeline, available at: <http://aseanmp.org/cambodia-mps-report/>.

6 Phnom Penh Post, “City court should spare Daily staffers: Ho Vann,” 24 September 2009, <http://www.phnompenhpost.com/national/city-court-should-spare-daily-staffers-ho-vann>.

7 Southeast Asian Press Alliance, “Supreme Court upholds guilty verdict in defamation case against opposition lawmaker,” 3 July 2010, <https://www.seapa.org/cambodias-supreme-court-upholds-guilty-verdict-in-defamation-case-against-opposition-lawmaker/>.

8 IPU, *Cambodia: Case No CMBD/47 – Mu Sochua – Resolution adopted by consensus by the IPU Governing Council at its 187th session* (6 October 2010), <http://www.ipu.org/hr-e/187/Cmbd47.htm>.

9 Both the SRP and HRP still exist as elections to commune councils and the Senate took place before the merger and thus elected officials continue to hold seats under each party. The HRP is expected to formally dissolve after its remaining elected councilors join the CNRP ahead of the 2017 commune elections and run under its banner, while the SRP is expected to dissolve after the Senate elections in January 2018.

The 2013 Elections and their Aftermath

In many ways, the 2013 national election was a game changer. For the first time, the opposition made significant gains in the number of seats they secured in the National Assembly, and the ruling CPP lost the sizeable majority it had enjoyed for many years, though it maintained a 68-to-55 seat edge. Despite these gains, the CNRP contested the results of the election, citing reports of election irregularities and claiming that it had in fact won a majority of the vote.¹⁰ For almost a year, elected CNRP MPs boycotted the National Assembly, until a deal between the CPP and the CNRP was struck in July 2014.

The deal was signed following the arrest of seven MPs-elect and a number of other CNRP activists and party officials during an opposition-led protest in Freedom Park, an area in central Phnom Penh designated specifically for demonstrations and public gatherings, which had been closed off by the authorities since January 2014 following violent protests on Phnom Penh's outskirts. Although the CNRP MPs-elect were released from prison as a condition of the political deal, the other activists and party officials were not, and they were eventually charged and imprisoned.

The July 2014 political deal saw the CNRP MPs-elect take their seats in the National Assembly, allowed Sam Rainsy to take up a seat in the National Assembly and assume the role of minority leader, and included a number of additional conditions, such as reform of the National Election Committee (NEC) and the appointment of a ninth independent member to the NEC. For a while, the political deal saw the situation returning to normal, with new laws being passed by Parliament and small reforms being undertaken by the CPP in certain ministries.

Yet only a year after the deal was struck, the so-called “culture of dialogue”¹¹ which had been hailed by both parties, broke down and opposition parliamentarians, party officials, and civil society voices seen as close to the opposition began to be harassed through judicial means, as well as the misuse of procedures and direct physical attacks and threats of violence. Since then, the situation has continued to deteriorate, and a large number of CNRP MPs, party activists and officials, non-governmental organization (NGO) workers, monks, and other critics of the government remain in jail. At the time of writing, local human rights NGO LICADHO put the number of political prisoners detained since early 2015 at 27.¹²

The 10 July 2016 murder of Kem Ley, a well-known political analyst who had often criticized Prime Minister Hun Sen and the CPP, marked a significant shift in the political climate. Kem Ley was murdered in broad daylight in central Phnom Penh,¹³ and although a man was arrested shortly after and charged with his murder, many felt that the investigation into the killing was inadequate, and uncorroborated theories that Prime Minister Hun Sen – or at the very least, high-ranking members of his government – had ordered the hit began to take hold.¹⁴ His murder has cast a dark shadow over both civil society and the opposition in Cambodia, increasing concerns that anyone may be targeted for being too critical of the government or for being too popular.

As the following sections will demonstrate, Kem Ley's murder has only been one instance – albeit the most visible and frightening – of repression of freedom of expression and other fundamental

¹⁰ Voice of America, “Cambodia Opposition Claims Win in Sunday Election,” 31 July 2013, <http://www.voanews.com/a/cambodia-opposition-gathering-evidence-to-contest-election-results/1713163.html>.

¹¹ The expression “culture of dialogue” has been used in Cambodia since the July 2014 political deal to denote greater communication and less aggressive rhetoric between the two parties. See The Diplomat, “Cambodia’s Withering ‘Culture of Dialogue,’” 12 October 2015, <http://thediplomat.com/2015/10/cambodias-withering-culture-of-dialogue/>.

¹² LICADHO, “Cambodia’s Political Prisoners,” Accessed: 24 February 2017, https://www.licadho-cambodia.org/political_prisoners/.

¹³ Phnom Penh Post, “Longtime rights champion Key Ley gunned down in broad daylight,” 10 July 2016, <http://www.phnompenhpost.com/national/longtime-rights-champion-kem-ley-gunned-down-broad-daylight>.

¹⁴ Cambodia Daily, “One Month Later, No Word on Kem Ley Murder Probe,” 10 August 2016, <https://www.cambodiadaily.com/archives/one-month-later-no-word-kem-ley-murder-probe-116476/>.

rights in Cambodia, and in particular, of those who criticize the government and pose a threat, real or perceived, to the ruling party's popularity.

Tensions continued to rise throughout the second half of 2016 and the beginning of 2017, particularly between the ruling party and the opposition. While Sam Rainsy and Kem Sokha – the two leaders of the CNRP – are the most well-known cases, a number of other opposition parliamentarians and party officials have been convicted and jailed on dubious charges, resulting in a situation where freedom of expression seems increasingly distant and where the space for criticism and open debate is increasingly limited – not only for the political opposition but also for civil society and the population at large. More and more, it appears that any criticism of the government or the ruling party – whether coming from the opposition, the UN, the diplomatic community, or civil society – is being treated with repression and repercussions. Critics are seen as one homogenous community, where one's level of popularity and influence is seemingly correlated with the level of risk one faces.

The Parliament's passage of amendments to the Law on Political Parties in February 2017 represented a dramatic escalation of this onslaught, rendering the situation for opposition political parties even more tenuous and expanding the possible repercussions of speaking out. The threat of these amendments, specifically requested by Prime Minister Hun Sen, resulted in the resignation of Sam Rainsy as President of the CNRP on 11 February,¹⁵ in a move aimed at safeguarding the party. As detailed later in this report, however, his decision to step down was not enough to protect the CNRP or its members since the new amendments still include opportunities for the ruling party to suspend or dissolve the opposition, if desired (see “Legislative Attacks and Procedural Violations” section).

These developments threaten the legitimacy of upcoming commune council elections in 2017 and national elections in 2018, and have increased the probability that multiparty competition and fair votes are unattainable. They have also erected roadblocks to any possibility of improvements in the situation for the opposition and for government critics.

III. JUDICIAL ATTACKS

A primary mechanism for undermining the opposition in the past three years has been the use of criminal charges and court proceedings to harass and silence opposition parliamentarians. Since the 2013 national elections, at least 15 parliamentarians have been targeted through judicial means: former CNRP President Sam Rainsy, current CNRP President Kem Sokha, SRP Senators Thak Lany and Hong Sok Hour, and CNRP MPs Um Sam An, Chan Cheng, Mu Sochua, Keo Phirum, Ho Vann, Long Ry, Nut Romduol, Men Sothavarin, Real Camerin, Pin Ratana, and Tok Vanchan.

¹⁵ Phnom Penh Post, “Sam Rainsy resigns from CNRP,” 11 February 2017, <http://www.phnompenhpost.com/national/sam-rainsy-resigns-cnrp>.

For some of these MPs, this is not the first time that they have faced similar legal action. Sam Rainsy, Kem Sokha, Mu Sochua, and Ho Vann – all prominent opposition figures in Cambodia – have been targeted in the past with charges of defamation, incitement, and more.¹⁶ However, the sheer number of opposition parliamentarians currently either in prison, charged, or convicted, coupled with the number of government critics outside of Parliament who have also been targeted, highlights the lack of rule of law and the pervasive deficiencies in the Cambodian judicial system, which remains highly politicized and influenced by the executive branch.

Judicial Context in Cambodia

The lack of independence of the Cambodian judiciary and the use of the courts to silence government critics has long been decried by human rights organizations and other external observers as a major impediment to the development of democracy and the rule of law in the country. Cambodia was ranked 112 out of 113 countries in the World Justice Project's 2016 Rule of Law Index, scoring particularly low on factors such as civil justice, absence of corruption, and open governance.¹⁷ A 2014 briefing note by the Cambodian Center for Human Rights described a “*widening gap between the constitutional guarantees in terms of the status of the judiciary and the way that the judiciary functions in practice. As this gap widens, the space for criticism and debate is shrinking, as the courts are used as political tools to silence opposition and dissent.*”¹⁸

In mid-July 2014, three new laws related to the judiciary were passed by the National Assembly and the Senate: the Law on the Organization of the Courts, the Law on the Statute of Judges and Prosecutors, and the Law on the Organization and Functioning of the Supreme Council of the Magistracy. These laws were widely condemned by local and international observers, who have said that, rather than protecting the independence of the judiciary, the laws in fact harm and infringe upon its independence, allowing undue influence and encroachment by the executive branch on judicial functions.¹⁹

Although these new laws – and the lack of independence of the judiciary which they have enshrined – signify nothing new in practice for a country that has had longstanding issues with its judicial system, their enactment has added insult to injury for a judiciary that was already in urgent need of reform.

Prosecution of Cases

The lack of independence of the judiciary and the high level of control exerted by the executive branch over the courts has meant that the prosecution of parliamentarians, as well as government critics in general, is made particularly easy, despite lawmakers holding parliamentary immunity. Over the past two years, this reality has been exemplified by a number of cases brought against opposition parliamentarians, including CNRP leaders Sam Rainsy and Kem Sokha, SRP Senators Thak Lany and Hong Sok Hour, and CNRP MPs Um Sam An and Chan Cheng.

Looking at the cases that have been brought to court over the past three years, several trends emerge: the pursuit of cases against parliamentarians who have actively raised sensitive political

¹⁶ See MP case timelines, available at: <http://aseanmp.org/cambodia-mps-report/>.

¹⁷ World Justice Project, *Rule of Law Index 2016*, available at: <http://data.worldjusticeproject.org>.

¹⁸ Cambodian Center for Human Rights, *Judicial Reform* (October 2014), http://www.cchrcambodia.org/admin/media/analysis/analysis/english/CCHR%20Briefing_Note_Judicial%20Reform_ENG_2014%E2%80%8B.pdf.

¹⁹ International Commission of Jurists, “Cambodia: ICJ condemns new draft laws that infringe on judicial independence,” 8 July 2014, <http://www.icj.org/cambodia-icj-condemns-new-draft-laws-that-infringe-on-judicial-independence/>.

issues or who are deemed to be too critical of the government; the legally-flawed use of the “*flagrante delicto*” exception provided for in the legislation regarding parliamentary immunity; and the judicial pursuit of opposition politicians who pose a threat to the CPP due to their popularity, visibility, and influence.

The prosecution of such cases is enabled by particularly vague legislation with regard to parliamentary immunity in Cambodia. Cambodia’s 1993 Constitution provides the basis for parliamentary immunity for members of the National Assembly in Article 80 and for Senators in Article 104. These articles explicitly state that lawmakers “*shall enjoy parliamentary immunity*” and that no lawmakers “*shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his/her duties.*” Prosecutions, arrests, and detentions of lawmakers can only be undertaken with the explicit approval of the respective body (or its Standing Committee in between sessions).²⁰

Although the Constitution fails to give a specific definition of “*during the exercise of his/her duties,*” the Law on the Status of the National Assembly Members (LSNAM) defines parliamentary immunity more specifically, splitting the provision into two parts: absolute and relative immunity. The first, absolute immunity, or non-liability as it is referred to in many other countries, is “*to ensure the expressing of opinions or ideas during the adoption [of laws] by the National Assembly members in the framework of exercising their duties.*” The second, relative immunity, also referred to as inviolability in other jurisdictions, is to “*ensure that the National Assembly members are free from being prosecuted, detained or arrested.*”²¹ The Law on the Status of Senate Members (LSSM) makes similar provisions for Senators.

CRIMINAL DEFAMATION

The sheer number of defamation cases brought up against the opposition over the years highlights the particularly problematic nature of the criminalization of defamation in Cambodian law. Human rights organizations have repeatedly held that the criminalization of defamation stands in violation of not only the Cambodian Constitution but also international treaties to which Cambodia is a party and which form an integral part of Cambodian law by means of Article 31 of the Constitution. Defamation is specifically criminalized under Article 305 of the Criminal Code, while additional articles criminalize “public insult” (Article 307), “malicious denunciation” (Articles 311 and 312), and “insult of a public official” (Article 502).²²

Criminal trials over cases of alleged defamation have become prevalent and normalized in Cambodia, in many cases resulting in convictions. While defamation itself does not carry a prison sentence, it carries a fine of 100,000 to 10 million riels (25 to 2,500 USD), the non-payment of which can result in jail time ranging from ten days to two years (Article 525 of the Cambodian Code of Criminal Procedure). For many Cambodians, these fines, especially if awarded at their maximum, are too large to be paid, meaning that imprisonment over a defamation conviction is a very real possibility. Meanwhile, Articles 311 and 312, which criminalize “malicious denunciation,” carry a potential prison sentence of one month to a year and a fine of 100,000 to 2 million riels (25 to 500 USD), and Article 502, which criminalizes “insult of a public official,” carries a potential prison sentence of one to six days and fine of 1,000 to 100,000 riels (0.25 to 25 USD).

20 The Constitution of the Kingdom of Cambodia, available at: <http://www.wipo.int/edocs/lexdocs/laws/en/kh/kh009en.pdf>.

21 An in-depth analysis of Cambodian legislation related to parliamentary immunity is provided in Annex I of this report.

22 Criminal Code of Cambodia, available at: http://ngocedaw.org/wp-content/uploads/2015/05/Criminal_Code_EN-KH_Jan_2014.pdf.

The Constitution, the LSNAM, and the LSSM make specific exceptions for instances of crimes being committed “*in flagrante delicto*” (i.e. being caught red-handed), whereby authorities are allowed to arrest and detain a member of the National Assembly or the Senate if caught in the act of committing a crime or immediately thereafter. Nevertheless, authorities must immediately report the arrest to the National Assembly or the Senate and request permission to continue the investigation and eventual prosecution.

These legislative provisions, however, have been repeatedly ignored and abused by the authorities when arresting and investigating MPs and Senators. The following cases exemplify these issues.

Hong Sok Hour

SRP Senator Hong Sok Hour was arrested and charged with forgery of public documents (Article 629 of the Criminal Code), use of forged public documents (Article 630 of the Criminal Code), and incitement to commit a felony (Article 495 of the Criminal Code) in August 2015 after Prime Minister Hun Sen accused him during a public speech of having posted a video to then-CNRP President Sam Rainsy’s Facebook page featuring a doctored version of Article 4 of the 1979 Cambodian-Vietnamese border treaty, which alleged that Cambodia and Vietnam had agreed to dissolve the border between the two countries.²³ The investigation and his trial came to an end over a year later, when he was convicted and sentenced to seven years in prison on 7 November 2016.²⁴



SRP Senator Hong Sok Hour (Source: CNRP)

Although the Senate, where the CPP holds a three fourths majority, voted to lift Hong Sok Hour’s parliamentary immunity, Hong Sok Hour was arrested and charged before his immunity was lifted because the authorities argued he was caught committing a crime “*in flagrante delicto*” (red-handed). The court’s argument that his case is one of “*flagrante delicto*” is particularly concerning given that he was charged and convicted for a social media post.

The 2007 Code of Criminal Procedure, in Article 86, defines flagrant felonies and misdemeanors (i.e. those in which “*in flagrante delicto*” procedures would apply) as “Offenses [that] are being committed” and “Offenses that have just been committed,” and specifies that they “Shall also be deemed as flagrant felonies or misdemeanors at the time right after the offense” when “a suspect is being chased red-handed by the public” or when “a person who is found to have an object, or a scar, or other clear and consistent leads which can be concluded that the person has committed or participated in the act of committing an offense.”²⁵

In Hong Sok Hour’s case, the authorities argued that his was a flagrant offense because the video in question remained on Sam Rainsy’s Facebook page for several days.²⁶ In other words, the authorities’

23 Phnom Penh Post, “SRP’s Sok Hour arrested,” 17 August 2015, <http://www.phnompenhpost.com/national/srps-sok-hour-arrested-0>.

24 LICADHO, “Flash News: Opposition Senator Convicted, Sentenced to Seven Years for Facebook Video,” 7 November 2016, <http://www.licadho-cambodia.org/flashnews.php?perm=195>.

25 Criminal Procedure Code of Kingdom of Cambodia, available at: <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814242.pdf>.

26 Human Rights Watch, “Cambodia: Drop Case Against Opposition Senator,” 1 October 2015, <https://www.hrw.org/news/2015/10/01/cambodia-drop-case-against-opposition-senator>.

exceedingly broad interpretation of what constitutes a red-handed crime held that because the video was still online when Hong Sok Hour was arrested, the “crime” was still being committed by the Senator at the time of his arrest.

In addition, a number of procedural concerns have been raised regarding Hong Sok Hour’s trial itself, which further point to the political nature of the charges and of the conviction. According to his legal defense team, the prosecution provided no evidence to prove his guilt, specifically that he had doctored the treaty himself and that he had intended to incite people by posting the video, rather than just spur debate about the issue. Moreover, the defense team was denied the opportunity to bring in border experts or to demonstrate how easily the doctored treaty could be found through a Google search.²⁷

Um Sam An

In a similar case, CNRP MP Um Sam An was arrested in April 2016, shortly after his return to Cambodia from a trip to the United States. After being questioned for hours by the Ministry of the Interior’s Anti-Terrorism Department (which is under the authority of the Prime Minister’s eldest son Hun Manet), Um Sam An was charged with incitement over a series of Facebook posts and other public remarks made in 2015 questioning the accuracy of the maps the government was using to demarcate the border with Vietnam.²⁸ Following his arrest, Interior Ministry Spokesman Khieu Sopheak was quoted as saying “*the case of Um Sam An [is] not different from the case of Hong Sok Hour, because he criticized the government about selling land to Vietnam and he also criticized the government for using fake maps.*”²⁹ On 10



CNRP MP Um Sam An (Source: CNRP)

October 2016, he was convicted on charges of incitement to commit a felony (Article 495 of the Criminal Code) and incitement to discriminate (Article 496 of the Criminal Code) and sentenced to two and a half years in prison.³⁰

Um Sam An’s case is particularly revealing because the investigation, prosecution, and conviction proceeded in the absence of a formal vote to lift Um Sam An’s parliamentary immunity. Authorities justified this decision based on the argument, which was disputed by the defense team, that Um Sam An was caught “*in flagrante delicto.*” Regardless, as discussed in the next section, the National Assembly’s vote to authorize Um Sam An’s continued detention and prosecution failed to fulfill the legal requirements for a quorum of two-thirds of all MPs and for a two-thirds majority approval of all MPs (see “Legislative Attacks and Procedural Violations” section).³¹

27 Interview conducted by authors on 30 November 2016.

28 Phnom Penh Post, “Incitement charge laid against CNRP’s Um Sam An,” 12 April 2016, <http://www.phnompenhpost.com/national/incitement-charge-laid-against-cnrps-um-sam>.

29 Cambodia Daily, “Opposition Lawmaker Um Sam An Arrested,” 11 April 2016, <https://www.cambodiadaily.com/news/opposition-lawmaker-um-sam-an-arrested-111140/>.

30 Phnom Penh Post, “Sam An sentenced to jail,” 11 October 2016, <http://www.phnompenhpost.com/national/sam-sentenced-jail>.

31 Cambodia Daily, “Immunity No Use for Jailed Lawmaker, Hun Sen Says,” 13 April 2016, <https://www.cambodiadaily.com/news/immunity-no-use-for-jailed-lawmaker-hun-sen-says-111264/>.

The fact that the court accepted to continue investigating and prosecuting the case despite the National Assembly failing to adhere its own legal requirements for such a vote highlights the flaws inherent in the judicial system. In this case, the court should have refused to move forward with the case until they had received notification of a vote to lift his parliamentary immunity or an authorization to continue investigating the case, which had been undertaken in accordance with the relevant legal provisions.

Finally, similarly to Hong Sok Hour's case, the authorities' claim that Um Sam An was caught red-handed in the first place is dubious. The charges leveled against Um Sam An were based on acts made during the previous year – hardly an offense that is in the act of being committed or has just been committed, as defined by Article 86 of the Code of Criminal Procedure. Authorities have argued that they only arrested Um Sam An in 2016 because he had been on an extended stay abroad and that they had to wait until he returned to Cambodia to arrest him.³² However, there is no evidence that an arrest warrant was issued or that other efforts were made to arrest him at the time of the alleged offenses.

Thak Lany

In a separate case, SRP Senator Thak Lany was convicted on 17 November 2016 of defamation (Article 305 of the Criminal Code) and incitement to commit a felony (Article 495 of the Criminal Code) – charges filed by Prime Minister Hun Sen himself – and sentenced to 18 months in prison for comments she made during a field visit in Ratanakiri province, during which she allegedly blamed the Prime Minister directly for the murder of political analyst Kem Ley in July 2016. The Senator was convicted in absentia,³³ and has received political asylum in Sweden.³⁴ Kem Ley's death caused widespread outrage, and rumors circulated in its aftermath that the CPP was behind it. Despite such rumors, however, very few people have directly accused the Prime Minister of ordering the hit. As such, the judicial prosecution of Thak Lany can be interpreted as a clear message that such comments and accusations on this particular issue will not be tolerated, regardless of who makes them, whether an elected lawmaker with parliamentary immunity or an average Cambodian citizen.



SRP Senator Thak Lany (Source: Facebook)

³² Phnom Penh Post, "CNRPs Um Sam An leaves 'illegal' court hearing, 6 September 2016. <http://www.phnompenhpost.com/national/cnrps-um-sam-leaves-illegal-court-hearing>.

³³ Cambodia Daily, "Senator Handed Jail Time for Hun Sen Remarks," 18 November 2016. <https://www.cambodiadaily.com/news/senator-handed-18-month-jail-sentence-hun-sen-remarks-120683/>.

³⁴ Cambodia Daily, "Fugitive Senator Waiting for Political 'Agreement' to Come Home," 22 November 2016. <https://www.cambodiadaily.com/news/fugitive-senator-waiting-political-agreement-come-home-120839/>.

TARGETED FOR CRITICIZING THOSE IN POWER

Thak Lany, Um Sam An, and Hong Sok Hour have all been investigated and convicted over comments that are seen as directly impacting the popularity and public perception of the CPP and Prime Minister Hun Sen. The CNRP has used disputes about the border with Vietnam as a key campaign issue, and it is one that resonates with the electorate, who for the most part view Vietnam with suspicion. Meanwhile, the murder of Kem Ley remains a sensitive topic in Cambodia, with few people publicly questioning the investigation into the killer. Sam Rainsy, who referred to Kem Ley's murder as "state-backed terrorism" in a Facebook post and in an interview with Radio Free Asia, has also been sued by Prime Minister Hun Sen for defamation and incitement for these remarks, although, as of writing, that case has yet to be tried.³⁵

Kem Sokha

In perhaps one of the most clearly political – and convoluted – cases of the past several years, CNRP President Kem Sokha has been under investigation for close to a year in a case of alleged infidelity and prostitution. At the beginning of March 2016, a recording surfaced on Facebook allegedly of then-CNRP Vice President Kem Sokha speaking with his mistress.³⁶ A few days later, the alleged mistress was identified, although she initially denied any amorous involvement with Kem Sokha. However, after a month of denying the affair, she changed her story and turned on the NGO advocates who had taken on her case, accusing them of bribing her to keep quiet.³⁷ She also filed a complaint against Kem Sokha, accusing him of having broken promises he allegedly made to her to buy her a house and give her money.³⁸



CNRP President Kem Sokha (Source: CNRP)

An investigation into these allegations of bribery was swiftly undertaken, and within a matter of days, four staffers from the NGO ADHOC – Ny Sokha, Yi Soksan, Nay Vanda, and Lem Mony – had been arrested and charged with bribing a witness (Article 548 of the Criminal Code), and a staffer from the National Election Committee – former ADHOC staffer Ny Chakrya – had been arrested and charged as an accomplice to the bribery (Articles 29 and 548 of the Criminal Code).³⁹ Sally Soen, an employee of the Cambodia office of the UN Office of the High Commissioner for Human Rights (OHCHR), was also charged, although the UN claims he has immunity and thus he has not surrendered to the authorities.⁴⁰

35 Phnom Penh Post, "PM's suit targets senator, Rainsy for 'slander' and 'incitement,'" 2 August 2016, <http://www.phnompenhpost.com/national/pms-suit-targets-senator-rainsy-slander-and-incitement>.

36 Phnom Penh Post, "Recordings hint at CNRP deputy leader Sokha's infidelity," 2 March 2016, <http://www.phnompenhpost.com/national/recordings-hint-cnrp-deputy-leader-sokhas-infidelity>.

37 Phnom Penh Post, "Alleged mistress files complaints against Sokha, Adhoc," 25 April 2016, <http://www.phnompenhpost.com/national/alleged-mistress-files-complaints-against-sokha-adhoc>.

38 Ibid.

39 Phnom Penh Post, "Rights workers, two others 'bribed witness', court says," 3 May 2016, <http://www.phnompenhpost.com/national/rights-workers-two-others-bribed-witness-court-says-un-holds-firm>.

40 Ibid.

At the same time, two additional CNRP MPs – Pin Ratana and Tok Vanchan – were investigated in relation with the case, supposedly for having flown the alleged mistress to Bangkok to meet with Kem Sokha. The National Assembly, however, voted in a plenary session against lifting their immunity, forcing the prosecutor to suspend the case against them.⁴¹ Nevertheless, Kem Sokha, who had been summoned as a witness in their case, was charged and convicted for failing to appear in court (Article 538 of the Criminal Code).⁴²

Like other cases, Kem Sokha was charged and convicted without his parliamentary immunity ever being lifted after a procedurally dubious vote in the National Assembly

Like other cases, Kem Sokha was charged and convicted without his parliamentary immunity ever being lifted after a procedurally dubious vote in the National Assembly (see “Legislative Attacks and Procedural Violations” section). Like Hong Sok Hour and Um Sam An, the authorities claimed that he had been caught “*in flagrante delicto*,” arguing based on a creative interpretation of the statutes that, when he did not show up for questioning, the authorities “saw” him in the act of committing an offense – the offense being failing to appear as a witness.

In a telling illustration of the political motivations and double standards involved the case, Kem Sokha is, at the time of writing, the only person in Cambodia’s history to have ever been convicted on charges of failing to appear as a witness.⁴³ In contrast, not only have hundreds of people all over the country failed to appear as witnesses in regular court cases, but several high-level CPP officials have repeatedly refused to appear after being summoned by the Extraordinary Chambers in the Courts of Cambodia, the mixed international-national tribunal trying senior members of the Khmer Rouge, most recently citing parliamentary immunity as a reason for their failure to appear.⁴⁴

In December 2016, Kem Sokha received a royal pardon at the request of Prime Minister Hun Sen, essentially clearing him of the charges of failing to appear as a witness,⁴⁵ but not necessarily officially dropping the investigation related to the broader cases of prostitution and defamation, including one filed by Thy Sovantha, a former CNRP youth activist with a large popular following who had a very public falling out with the CNRP leadership in early 2014.⁴⁶ Thy Sovantha had filed a suit over comments in the recording, which said she had been using the CNRP “to do politics and get money.”⁴⁷ In May 2016, she also launched a petition to demand that Kem Sokha step down over the alleged sex scandal.⁴⁸

41 The case has not been officially dropped, raising concerns that the investigation against the two MPs could be revived if they were to find themselves without parliamentary immunity in the future. The following section discusses in further details on the use of such tactics.

42 Cambodia Daily, “Kem Sokha Sentenced to Five Months in Prison,” 9 September 2016, <https://www.cambodiadaily.com/news/kem-sokha-sentenced-five-months-prison-117812/>.

43 Confirmed by the authors in an interview with lawyer Sam Sokong on 30 November 2016.

44 See, for instance: Cambodia Daily, “ECCC Judge Calls Officials to Testify,” 8 October 2009, <https://www.cambodiadaily.com/archives/eccc-judge-calls-officials-to-testify-1460/>; Cambodia Daily, “Defense Once Again Seeks Gov’t Witnesses at KR Tribunal,” 31 July 2014, <https://www.cambodiadaily.com/archives/defense-once-again-seeks-govt-witnesses-at-kr-tribunal-65397/>; Phnom Penh Post, “Chea defence calls for PM, other leaders to testify at KRT,” 15 June 2016, <http://www.phnompenhpost.com/national/chea-defence-calls-pm-other-leaders-testify-krt>.

45 Phnom Penh Post, “Breaking: Royal pardon for Kem Sokha,” 2 December 2016, <http://www.phnompenhpost.com/national/breaking-royal-pardon-kem-sokha>.

46 Phnom Penh Post, “The Rise and Revolt of ‘Rescue Girl’ Thy Sovantha,” 6 July 2016, <https://www.cambodiadaily.com/news/the-rise-and-revolt-of-rescue-girl-thy-sovantha-115052/>.

47 Phnom Penh Post, “Sovantha suit opens door for probe of Sokha,” 11 March 2016, <http://www.phnompenhpost.com/national/sovantha-suit-opens-door-probe-sokha>.

48 Cambodia Daily, “Social Media Starlet Launches Campaign for Kem Sokha to Step Down,” 14 May 2016, <https://www.>

Three days after Kem Sokha's pardon, Seang Chet, a commune chief who was sentenced to five years in prison in relation to the bribery case, was also pardoned and released.⁴⁹ At the time of writing, the ADHOC staffers and others are still in jail, and although there had been indications that they would also be released under a political deal,⁵⁰ the prosecutor handling the case refused on 23 January 2017 a request to end the investigative stage of the case, raising concerns that the five will remain in jail for the foreseeable future.⁵¹

Kem Sokha's case is different than that of other opposition parliamentarians that have been charged and convicted in that it deals directly with his private life as opposed to his comments or activities as a parliamentarian, and portrays him as a womanizer and a corrupt individual. As a popular leader of the CNRP, Kem Sokha poses a particular threat to the CPP and this case could be interpreted as an attempt to discredit him in the eyes of the electorate.

This is also not the first time that Kem Sokha has faced such accusations of infidelity and sexual impropriety. In the lead-up to the 2013 national election, he faced similar accusations, including rumors of an alleged affair that spread across social media⁵² and one particularly grave accusation, made directly by Prime Minister Hun Sen, that he had had sexual relations with a 15-year-old girl in 2011.⁵³ The fact that these very serious allegations of statutory rape were never investigated by the authorities, combined with the timing of the accusations, lends further weight to the idea that they were little more than an attempt to undermine Kem Sokha's popularity ahead of the elections.

Outstanding Charges

While some cases, such as those against Hong Sok Hour, Um Sam An, and Thak Lany, have been pursued to their full extent, with the individuals currently convicted or imprisoned, others have seen their cases put on hold, but not dropped, leaving the charges as threats hanging over their heads.

Freedom Park Protest

In July 2014, shortly before the political deal was signed between the CPP and the CNRP, seven CNRP MPs-elect were arrested over the space of two days after holding a protest to "re-take" Freedom Park, Phnom Penh's government-designated space for assemblies and gatherings, which had been closed off since January 2014.

The CNRP MPs-elect – Mu Sochua, Keo Phirum, Men Sothavarin, Ho Vann, Real Camerin, Long Ry, and Nuth Rumduol – were all charged with instigating aggravated, intentional violence (Articles 28 and 218 of the Criminal Code), inciting others to commit a felony (Article 495 of the Criminal Code), and leading an insurrectional movement (Article 459 of the Criminal Code), charges carrying a total combined penalty of 22 and a half to 37 years in prison.

After a political deal was reached between the CPP and the CNRP later that month, the seven MPs-elect were released. The charges, however, were never officially dropped, and the case was

cambodiadaily.com/news/social-media-starlet-launches-campaign-for-kem-sokha-to-step-down-112577/. Thy Sovantha has also separately sued other CNRP officials and activists for defamation, and as detailed in the "Climate of Fear" section of this report, has been implicated in having planned the October 2015 protests at the National Assembly, which saw two CNRP MPs several beaten.

49 Cambodia Daily, "CNRP Says Adhoc Prisoners Set to Be Freed," 8 December 2016, <https://www.cambodiadaily.com/news/cnrp-says-adhoc-prisoners-set-freed-121673/>.

50 Ibid.

51 Phnom Penh Post, "Adhoc 5 probe sent back," 24 January 2017, <http://www.phnompenhpost.com/national/adhoc-5-probe-sent-back>.

52 Phnom Penh Post, "Mud-slinging intensifies," 14 June 2013, <http://www.phnompenhpost.com/national/mud-slinging-intensifies>.

53 Cambodia Daily, "Hun Sen Accuses Kem Sokha of Sex With Girl, 15," 14 June 2013, <https://www.cambodiadaily.com/elections/hun-sen-accuses-kem-sokha-of-sex-with-girl-15-30960/>.

never officially dismissed. Although the seven MPs have had parliamentary immunity since taking up their seats in the National Assembly, the cases are effectively still hanging over their heads and there are no guarantees that their immunity will protect them from prosecution, resulting in concerns that the case may be revived at any time. These concerns were given weight in early August 2015, when Prime Minister Hun Sen specifically warned the parliamentarians in question that their parliamentary immunity would not preclude a new round of summonses in the case.⁵⁴

Chan Cheng

The very real possibility that these cases could be revived if the CPP perceives a political imperative to do so is exemplified by the case of CNRP MP Chan Cheng. In September 2011, Chan Cheng, who was already an MP at the time representing the SRP, drove to the prison in Kandal province, which he represents in the National Assembly, and picked up a local deputy commune chief, Meas Peng, and his lawyer, Choung Choungy. Meas Peng had been summoned for questioning in relation to a land dispute between villagers and a property owner. Given that the judge had never issued an arrest warrant for Meas Peng, he, accompanied by Chan Cheng and Choung Choungy, was allowed to walk out of the prison without any problems. However, on 9 December, the National Assembly received a request from the Ministry of Justice to lift Chan Cheng's immunity so that he could be questioned over a potential criminal charge of having facilitated Meas Peng's escape from prison.

Chan Cheng's parliamentary immunity was lifted by the National Assembly on 20 December, and on 23 December, both he and Choung Choungy were charged by the Kandal Provincial Court with aiding and abetting Meas Peng's escape from prison. Although there were multiple summonses and hearings over the next few months, the case never moved forward – until two years later.

On 20 July 2014, Chan Cheng, now an MP for the CNRP and supposedly protected by renewed parliamentary immunity, was summoned to appear at the Kandal Provincial Court to stand trial on these long-forgotten charges of aiding and abetting a prison escape. On 22 July, his trial started, without his parliamentary immunity ever being lifted by the National Assembly, and on 13 March 2015, he was convicted of “procuring a means of escape” (Article 565 of the Criminal Code) and sentenced to two years in prison.⁵⁵ Although Chan Cheng's defense filed an opposition motion against the judgment with the Kandal Provincial Court shortly after his conviction, almost two years later the court has yet to take any action, and at the time of writing, Chan Cheng still holds parliamentary immunity.



Police stand outside the CNRP headquarters in August 2016, Phnom Penh (Source: CNRP)

⁵⁴ Phnom Penh Post, “Vanishing act: Immunity is often ethereal,” 14 August 2015, <http://www.phnompenhpost.com/national/vanishing-act-immunity-often-ethereal>.

⁵⁵ Phnom Penh Post, “Two years for CNRP politician,” 14 March 2015, <http://www.phnompenhpost.com/two-years-cnrp-politician>.

Sam Rainsy

Perhaps the most obvious examples of the government purposely keeping cases in their back pocket to resurrect down the line if need be are those that relate to former CNRP President Sam Rainsy. Although he has been faced with an onslaught of new charges in 2015, 2016, and 2017, one is distinct in that, rather than stemming from a recent action by the CNRP President, it dates back nearly a decade. In 2008, Sam Rainsy was faced with a defamation lawsuit filed by Foreign Minister Hor Namhong, after Sam Rainsy publicly accused him of having collaborated with his Khmer Rouge captors while imprisoned at the Boeung Trabek Prison in the late 1970s. He was tried and convicted in absentia, and sentenced to two years in prison – a sentence he never served since he already exiled himself to France by the time the sentence was handed down.



Former CNRP President Sam Rainsy (Source: VOA)

When Sam Rainsy received a royal pardon in 2013, paving the way for his return to Cambodia ahead of the national election that year, the pardon in fact did not include the 2008 defamation conviction, but only the convictions in four later cases, although many assumed at the time that the pardon covered all previous convictions.⁵⁶ As the political situation started to deteriorate throughout the second half of 2015, the 2008 defamation case was revived. An arrest warrant was issued for Sam Rainsy by the Phnom Penh Municipal Court on 13 November 2015,⁵⁷ just one day after Prime Minister Hun Sen called Sam Rainsy the “son of a traitor” in videos and text posted to his Facebook.⁵⁸ He was subsequently stripped of his National Assembly seat (see “Legislative Attacks and Procedural Violations” section).⁵⁹

Similarly to Chan Cheng’s case, although Sam Rainsy’s immunity had been lifted in the past, he had received immunity once again in July 2014 when the CNRP took up their seats in the National Assembly, and it was assumed by many that this immunity protected him from prosecution.⁶⁰ However, the authorities have argued that Sam Rainsy’s 2014 immunity did not cover an offense committed in 2008. Cambodian legislation regarding parliamentary immunity is particularly vague on this matter and does not provide any additional guidance as to whether he can be imprisoned for an offense for which he was convicted prior to gaining immunity.

⁵⁶ See, for instance: Radio Free Asia, “Cambodian Opposition Chief Sam Rainsy Gets Royal Pardon,” 12 July 2013, <http://www.rfa.org/english/news/cambodia/pardon-07122013100422.html>, which stated that the King had “granted a pardon annulling Sam Rainsy’s previous convictions for which he was sentenced to 11 years in prison.” Also see: Phnom Penh Post, “Opposition leader Sam Rainsy pardoned,” 12 July 2013, <http://www.phnompenhpost.com/national/opposition-leader-sam-rainsy-pardoned>, which stated that “CNRP party spokesman Yim Sovann declared Friday that the pardon was proof the convictions against Rainsy, which totalled more than a decade in jail time and related mainly to a dispute over the border, were baseless to begin with.”

⁵⁷ Phnom Penh Post, “Sam Rainsy faces arrest warrant,” 14 November 2015, <http://www.phnompenhpost.com/post-weekend/sam-rainsy-faces-arrest-warrant>.

⁵⁸ Phnom Penh Post, “PM launches personal attack on Rainsy,” 13 November 2015, <http://www.phnompenhpost.com/national/pm-launches-personal-attack-rainsy>.

⁵⁹ Phnom Penh Post, “Rainsy stripped of lawmaker status,” 16 November 2015, <http://www.phnompenhpost.com/national/rainsy-stripped-lawmaker-status>.

⁶⁰ See, for instance: Radio Free Asia, “Cambodian Court Issues Arrest Warrant for Opposition Chief Sam Rainsy,” 13 November 2015, <http://www.rfa.org/english/news/cambodia/warrant-11132015165238.html>.

An additional concern regarding this case is how Sam Rainsy could have been made eligible for the National Assembly if he had not been pardoned for the 2008 defamation case and conviction. The Law on the Election of Members of the National Assembly (LEMNA), in Article 24, states that “The following persons shall not have the right to stand as a candidate in the Election of Members of the National Assembly: [...] 2. Persons who are convicted for a felony or misdemeanor punishment by the courts and who have not yet been rehabilitated; or 3. Persons condemned to be deprived of their right to vote or deprived of the right to run in the election.”⁶¹ It would appear, then, that Sam Rainsy and others would have had reason to believe the 2013 royal pardon included the 2008 defamation case, based on the fact that he was allowed to take a seat in the National Assembly.

In addition to the revived 2008 defamation case, Sam Rainsy has been charged in seven new cases since August 2015:

- As an accomplice to forging public documents, using forged public documents, and incitement to commit a felony (Articles 29, 629, 630, and 495 of the Criminal Code) in the case against Hong Sok Hour in August 2015, for which he was convicted and sentenced to five years in jail on 27 December 2016;
- With defamation (Article 305 of the Criminal Code) in a case filed by National Assembly President Heng Samrin in November 2015, for which he was convicted and fined 37,500 USD on 28 July 2016;
- With defamation (Article 305 of the Criminal Code) in a case filed by CPP web administration official Som Soeurn in March 2016, for which he was convicted and fined 6,250 USD on 8 November 2016;
- With defamation and incitement to commit a felony (Articles 305 and 495 of the Criminal Code) in a case filed by Prime Minister Hun Sen in August 2016;
- With another incitement to commit a felony charge (Article 495 of the Criminal Code) filed by Prime Minister Hun Sen in September 2016; and
- With two separate but related defamation charges (Article 305 of the Criminal Code) filed in January 2017, one by Prime Minister Hun Sen and one by former CNRP youth activist Thy Sovantha.⁶²

Sam Rainsy now faces seven years in jail for the existing convictions if he returns to Cambodia (he has been abroad since October 2015) and could face up to an additional four years if convicted on all charges and sentenced to the maximum jail time permitted for each.⁶³ He could also be held liable for millions of dollars in compensation and fines – the non-payment of which could result in additional jail time. In mid-October 2016, the Cambodian Council of Ministers issued a directive banning Sam Rainsy from returning to Cambodia, making his exile official.⁶⁴

Following the announcement of planned amendments to the Law on Political Parties that threatened to inflict serious damage on the opposition, Sam Rainsy resigned from the CNRP on 11 February 2017.⁶⁵ As a result of the content of the amendments ultimately approved, however – and given the large number of pending cases against additional CNRP lawmakers – Sam Rainsy’s decision to step down has not removed the threat of dissolution from the party.

⁶¹ Law on the Election of Members to the National Assembly (Khmer version), available at: <http://bit.ly/2nkAEOE>.

⁶² For more details on the cases against Sam Rainsy, see the Sam Rainsy timeline, available at: <http://aseanmp.org/cambodia-mps-report/>.

⁶³ This includes the two-year jail sentence for the 2008 defamation suit filed by Foreign Minister Hor Namhong.

⁶⁴ Phnom Penh Post, “It’s real exile now, says Rainsy,” 24 October 2016, <http://www.phnompenhpost.com/national/its-real-exile-now-says-rainsy>.

⁶⁵ Phnom Penh Post, “Sam Rainsy resigns from CNRP,” 11 February 2017, <http://www.phnompenhpost.com/national/sam-rainsy-resigns-cnrp>.



The National Assembly in session in December 2016, Phnom Penh (Source: CNRP)

Conclusion

For all of these cases, the way in which they were brought up by the courts, as well as the way in which they were investigated, prosecuted, and, for some, pardoned or dropped, leaves little doubt as to their political nature. While Prime Minister Hun Sen has repeatedly argued that the cases were brought up only because the individuals committed real crimes under Cambodian law and that there was no political influence at any stage of the process, other high-ranking government officials have been recorded making contradictory statements.

In May 2016, for instance, Ouch Borith, a secretary of state at the Ministry of Foreign Affairs, speaking at a European Union-Cambodia Joint Committee meeting in Phnom Penh, told EU diplomats that *“our unique history made ‘peace and stability’ the core value to be preserved at all cost [...] it is with deep regret that CNRP persistently violated the terms of ‘Culture of Dialogue’ ... thus leaving CPP no choice but to resort to legal settlements in order to enhance the rule of law in Cambodia.”*⁶⁶

The arbitrary nature of the charges brought against individual parliamentarians leads other lawmakers to reasonably believe that they could be targeted next

The arbitrary nature of the charges brought against individual parliamentarians leads other lawmakers to reasonably believe that they could be targeted next, and the prevalence of outstanding charges, currently on hold but not dismissed, puts a large number of MPs at particular risk. As detailed in the next section, recently passed amendments to the Law on Political Parties heighten the looming threats posed by such outstanding charges, extending them not only to individual MPs, but to the opposition party as a whole (see “Legislative Attacks and Procedural Violations” section). With these threats hanging over their heads, opposition

parliamentarians are more likely to engage in self-censorship and have more difficulty fulfilling their legislative duties effectively, undermining the institution of Parliament – and the democratic principles it is meant to espouse – as a whole.

⁶⁶ Cambodia Daily, “Hun Sen Decides When ‘Rule of Law’ Applies,” 4 July 2016. <https://www.cambodiadaily.com/news/hun-sen-decides-when-rule-of-law-applies-114955/>.

IV. LEGISLATIVE ATTACKS AND PROCEDURAL VIOLATIONS

As the judiciary has ramped up its efforts to target opposition parliamentarians, the Cambodian Parliament itself has aided and abetted these actions by failing to defend its members, despite constitutional and legal guarantees of parliamentary immunity, and by undermining opportunities for inter-party dialogue and multiparty competition. Since the 2013 elections, the National Assembly and Senate have increasingly undermined the safety and freedom of their members by ignoring their own regulations and procedures and by relying on expanded interpretations of those procedures to allow court cases to move forward against individual members. The legislature has also repeatedly acted as a rubber stamp for the executive branch, approving legislation and regulations that empower the executive and politicized judiciary to continue to threaten opposition MPs.

Procedural Violations Related to Parliamentary Immunity

As previously outlined, the Cambodian Constitution affords lawmakers parliamentary immunity,⁶⁷ intended to ensure that no parliamentarian may “*be prosecuted, detained or arrested because of opinions expressed during the exercise of his/her duties.*”⁶⁸ Additional specifics about the procedural implementation of this immunity are included within the Law on the Status of National Assembly Members (LSNAM) and the Law on the Status of Senate Members (LSSM).⁶⁹

Despite these explicit protections, however, government officials have in the past expressed dismissiveness for the concept of parliamentary immunity, viewing it as an easily removed barrier to the prosecution of MPs. In an April 2009 speech, for instance, Prime Minister Hun Sen said that lifting parliamentary immunity was “*easier than peeling a banana.*”⁷⁰ At the time of his remarks, the CPP held a commanding majority in both houses of Parliament, well above the two-thirds majority required to lift the immunity of any lawmaker. The Prime Minister’s comments were therefore a testament to the lack of independence of ruling party MPs and the willingness of the Prime Minister and his allies to deploy the lifting of parliamentary immunity in a political manner.

Up until 2013, the CPP’s sizeable majorities in both houses enabled the party to unilaterally lift the parliamentary immunity of any member of either the National Assembly or the Senate, an act which was done on several occasions, including to then-opposition leader Sam Rainsy in 2005⁷¹ and 2009,⁷² opposition MPs Cheam Channy and Chea Poch in 2005,⁷³ and opposition MPs Mu Sochua and Ho Vann in 2009.⁷⁴

67 For a more complete discussion of parliamentary immunity as a concept, and as a legal provision in Cambodia and in other jurisdictions, see Annex I of this report.

68 The Constitution of the Kingdom of Cambodia, available at: <http://www.wipo.int/edocs/lexdocs/laws/en/kh/kh009en.pdf>.

69 Law on the Status of National Assembly Members (Khmer version), available at: <http://www.national-assembly.org.kh/tv/kh/ViewLawFile.aspx?LawDID=104>; Law on the Status of Senate Members (Khmer version), available at: <http://www.national-assembly.org.kh/tv/kh/ViewLawFile.aspx?LawDID=154>.

70 Phnom Penh Post, “Defamation suits heard in PP court,” 8 May 2009, <http://www.phnompenhpost.com/national/defamation-suits-heard-pp-court>.

71 Human Rights Watch, “Cambodia: Opposition Politicians Arrested, Forced to Flee,” 6 February 2015, <https://www.hrw.org/legacy/english/docs/2005/02/07/cambod10138.htm>

72 Phnom Penh Post, “Comfrel criticizes CPP over Rainsy,” 19 March 2009, <http://www.phnompenhpost.com/national/comfrel-criticises-cpp-over-rainsy>.

73 Human Rights Watch, “Cambodia: Opposition Politicians Arrested, Forced to Flee,” 6 February 2015, <https://www.hrw.org/legacy/english/docs/2005/02/07/cambod10138.htm>.

74 BBC, “Cambodia strips MPs of immunity,” 22 June 2009, <http://news.bbc.co.uk/2/hi/asia-pacific/8112353.stm>. Also see: Cambodian Center for Human Rights, *Legal Analysis: The Case of the Kingdom of Cambodia v. Mu Sochua* (May 2010), http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2010-06-01-%20Legal%20Analysis%20of%20the%20Case%20of%20Kingdom%20of%20Cambodia%20SOCHUA_%20EN.pdf

Following the 2013 elections, however, the CPP lost control of its two-thirds majority in the National Assembly, dropping from 90 to 68 seats out of 123 total in the chamber.⁷⁵ This meant that the party could no longer rely on the ability to unilaterally lift parliamentary immunity of any National Assembly member. In this context, the CPP has increasingly relied since 2013 on broad interpretations of the procedures outlined in statutes governing parliamentary immunity to enable cases to proceed against opposition lawmakers.

Chief among these is the so-called “*flagrante delicto*” clause, which appears in the articles of the Cambodian Constitution, the LSNAM, and the LSSM that relate to parliamentary immunity and allows for authorities to arrest and detain members of Parliament who are caught in the act of committing a crime. Despite the fact that no provision exists for the pursuit of criminal charges against lawmakers without a qualifying vote by the relevant legislative chamber authorizing such action, authorities have pursued cases against two members of the National Assembly since 2013 – Kem Sokha and Um Sam An – citing the “*flagrante delicto*” clause as a rationale in the absence of such a vote.

The Constitution outlines the procedures to follow in cases deemed to be “*flagrante delicto*” offenses in Article 80, relating to the National Assembly: “*In that case, the competent authority shall immediately report to the National Assembly or to the Standing Committee and request permission. The decision of the Standing Committee of the National Assembly shall be submitted to the National Assembly at its next session, for approval for a two third majority vote of all Members of the National Assembly.*”⁷⁶

In both Um Sam An’s and Kem Sokha’s cases, however, the National Assembly’s votes to allow the authorities to proceed with prosecution appear to have violated these procedures. When authorities sent a request to the National Assembly for permission to continue to detain Um Sam An after his arrest in Siem Reap in April 2016, that chamber’s Standing Committee provided permission and then forwarded the decision to the National Assembly plenary, which subsequently upheld the decision during a session in which only CPP members were present due to a boycott by the CNRP.⁷⁷ Similarly, the case against then-CNRP Vice President Kem Sokha, the National Assembly’s Standing Committee consented to the authorities’ request for permission to proceed with the charges and only forwarded the request to the full chamber during a session, which the CNRP had boycotted.⁷⁸ The fact that, in both cases, only CPP members were present for the vote violated the Constitutional requirement of a two-thirds majority vote of all members, as well as rules stipulated in Article 9 of the LSNAM, which require a quorum of at least two-thirds of all members in order to hold such a vote in the first place.⁷⁹

75 Cambodia Daily, “CPP Wins, but Suffers Loss in Parliamentary Majority,” 29 July 2013, <https://www.cambodiadaily.com/elections/cpp-wins-but-suffers-loss-in-parliamentary-majority-37210/>.

76 It should also be noted that the law is silent on the specific procedures that the Standing Committee should follow in these cases. It does not, for instance, outline how the Standing Committee should come to a decision (i.e. whether there should be a vote and, if so, how many votes are necessary), what format the decision should take, or whether the Standing Committee’s decision can be appealed. The law is similarly silent on whether a vote by the plenary to lift immunity and/or to allow an investigation to continue can be challenged or appealed by the defendant, raising significant concerns regarding due process.

77 Cambodia Daily, “Immunity No Use of Jailed Lawmaker, Hun Sen Says,” 13 April 2016, <https://www.cambodiadaily.com/news/immunity-no-use-for-jailed-lawmaker-hun-sen-says-111264/>.

78 Khmer Times, “CPP Votes for Sokha’s Arrest,” 30 May 2016, <http://www.khmertimeskh.com/news/25534/cpp-votes-for-sokha---s-arrest/>.

79 In the case of Um Sam An, authorities have pointed to the last sentence of Article 80 of the Constitution, which provides for the suspension of the prosecution of an MP by a three-fourths majority vote of the full National Assembly, as a rationale for their action. Justice Minister Chin Malin was quoted as saying that they “were unable to find the three-quarters majority vote to stop the court’s procedures, so that’s why the National Assembly approved with 50-percent-plus-one to allow the authorities to continue with the arrest and detention of Um Sam An” (See: Cambodia Daily, “With Jailing, Flagrant Abuse of Constitution,” 18 April 2016, <https://www.cambodiadaily.com/news/with-jailing-flagrant-abuse-of-constitution-111395/>). He essentially argued that this last provision meant that, in cases of flagrant offenses, authorities have full reign to continue the investigation and prosecution of an MP unless proactive action is undertaken by the National Assembly to stop the process. This flawed interpretation of Article 80 of the Constitution sets a dangerous precedent by rendering the Constitution’s procedural provisions for lifting parliamentary immunity basically toothless.

Simply being “caught in the act” of committing a crime – however that is defined – does not render parliamentary immunity irrelevant

In sum, while authorities have derived a broad mandate for the prosecution of lawmakers in cases of “*flagrante delicto*,” no provision in the Constitution, LSNAM, or other relevant statute explicitly allows for the prosecution of lawmakers in the absence of a two-thirds majority vote by all members of the National Assembly. In other words, simply being “caught in the act” of committing a crime – however that is defined – does not render parliamentary immunity irrelevant. Instead, it allows authorities to arrest the individual in question, but still requires them to immediately report to the Parliament for

permission to prolong the detention and proceed with the case.⁸⁰

Over the past two years, however, the National Assembly has decided that in “*flagrante delicto*” cases, it can provide consent to authorities to proceed, without following mandated procedures. This interpretation has effectively created a procedural loophole – a ‘pocket veto’ of immunity: by not following the requirements for votes on authorizing investigations, the National Assembly can de facto lift immunity without formally doing so. The implication is the effective neutering of parliamentary immunity, rendering it meaningless since MPs have no protection from prosecution or conviction if authorities choose to arbitrarily invoke claims of “flagrant” offenses.

The National Assembly’s procedural gymnastics lie in stark contrast to the workings of the Senate, where the CPP still controls a two-thirds majority of seats. As a result, the Senate proceeded through the formal process of removing parliamentary immunity in the cases of SRP Senators Thak Lany and Hong Sok Hour. In both of these cases, using a ‘pocket veto’ of parliamentary immunity was not necessary since the Senate Standing Committee was able to send the cases to the plenary and not only achieve a quorum but also get a favorable vote. The contrast here with the reliance on procedural loopholes in the National Assembly – where a full plenary vote on a decision to lift immunity meeting the legal requirements would likely fail to get a two-thirds majority approval given the CPP’s mere 55 percent majority in the chamber – further undermines the already dubious legal rationale used to defend the National Assembly’s moves.

The implication is the effective neutering of parliamentary immunity, rendering it meaningless

Furthermore, the failure of either the National Assembly or the Senate to question the authorities’ invocation of the “*flagrante delicto*” clause demonstrates a dereliction of duty on the part of the legislature. In the cases of Um Sam An and Kem Sokha, the reading of the “*flagrante delicto*” clause by the authorities has been overly broad and deliberately twisted so as to enable the detention of lawmakers, who would otherwise be protected from arrest by parliamentary immunity (see “Judicial Attacks” section). This is at least in part due to the way the legislation is written and the

⁸⁰ Contrary to the authorities’ stated interpretation, the last sentence of the Constitution’s Article 80 is a stand-alone clause – reiterated in Article 13 of the LSNAM – which simply provides a procedure for the suspension of any investigation and prosecution of an MP, whether it is a case of “*in flagrante delicto*” or not. Article 13 of the LSNAM specifically states that the provisions covers “all cases above,” lending weight to the argument that the three-fourth majority vote to suspend an investigation is not related specifically to “*flagrante delicto*” cases. Article 104 of the Constitution provides similar provisions for Senators, as does the LSSM.

lack of precision in many of the articles that provide guidance on the proper procedure to follow in these cases, which leaves too much room for interpretation and procedural and judicial abuse.

In this context, Parliament has a particularly important obligation to protect its members from politically motivated prosecutions, which is why the duty to lift immunity and allow prosecutions to proceed falls on Parliament rather than on the judiciary. The facts of the cases brought against opposition MPs, detailed in the previous section, indicate clear political motivations. This should have led Parliament to deny permission to the authorities to continue investigations and prosecutions. At the very least, the National Assembly should have required the authorities to provide detailed information and evidence on what constituted “*flagrante delicto*” to aid them in their assessment of the cases. Yet no such action was taken.

Given the post-2013 landscape, the CPP, in its efforts to undermine the opposition, has resorted to methods that not only target opposition MPs, but also erode the foundations of parliamentary immunity as an institutional safeguard. Through broad interpretations of “*flagrante delicto*,” the role of the relevant Standing Committees, and various other clauses of the Constitution and LSNAM, the ruling party has effectively rendered parliamentary immunity protections meaningless and undermined the security of MPs and the capacity of the Parliament to serve as an effective legislative check.

Parliamentary immunity exists as a bulwark against politically motivated actions by an executive and politicized judiciary. Yet as a result of its actions, the Cambodian Parliament is essentially functioning as another institution undermining and persecuting its own members. In this way, it aids and abets efforts by the executive and judicial branches to harass opposition parliamentarians and cedes power to fundamentally compromised agents of law enforcement.



MPs attend a National Assembly in session in December 2016, Phnom Penh (Source: CNRP)

Other Procedural Violations

Beyond parliamentary immunity, the National Assembly has taken other actions, which contravene written procedures and regulations and undermine the ability of opposition lawmakers to perform their duties.

Removal of Kem Sokha as National Assembly Vice President

The removal of then-CNRP Vice President Kem Sokha from his position as First Vice President of the National Assembly on 30 October 2015 was at best a politicized action without legal precedent and at worst a gross violation of parliamentary procedure intended to directly undermine the opposition. The decision was made via a National Assembly vote, which was boycotted by all opposition members. All 68 CPP MPs voted in favor of the measure.⁸¹

The Constitution, in Article 87, stipulates that the National Assembly should have a President and two Vice Presidents, and only provides for the replacement of a President or Vice President in cases of death or resignation.⁸² The CPP's unilateral decision to remove Kem Sokha from his position therefore lacks a legal basis, as the Constitution, as well as the National Assembly's internal regulations, provides no procedures for the removal of a Vice President. Citing this lack of legal justification, the CNRP has refused to nominate another member to fill the position of First Vice President of the National Assembly.⁸³

The vote on Kem Sokha's removal came in the context of a ramped-up war of words between CPP and CNRP leaders, which culminated in an attack on two members of the National Assembly, described in the next section (see "Climate of Fear" section). This context, combined with the political implications of the move, leave little doubt as to its political motivations.

Sam Rainsy's Expulsion from the National Assembly

On 16 November 2015, then-CNRP President Sam Rainsy was stripped of his seat in the National Assembly by a vote of that chamber's Standing Committee following a request from the Ministry of Justice.⁸⁴ The Standing Committee justified the unilateral decision to remove Sam Rainsy from office, citing a warrant for his arrest issued in relation to a 2008 defamation case against him brought by Foreign Minister Hor Namhong. National Assembly Spokesperson Chheang Vun referenced Article 14 of the LSNAM, which states that, "*The National Assembly member, upon final judgment or verdict rendered by the court as a convicted person with jail term, shall completely lose his/her rights, privileges and membership as a National Assembly member,*"⁸⁵ as well as Article 139 of the Law on the Election of Members to the National Assembly (LEMNA), which states that "*A member of the National Assembly shall lose his/her membership*" if "*he/she has been sentenced with imprisonment for a felony or a misdemeanor.*"⁸⁶

However, since the conviction occurred in 2011, in the absence of a royal pardon, Article 24 of the LEMNA should have precluded Sam Rainsy from taking up a seat in the National Assembly in 2014 in the first place, as it states that "*Persons who are convicted for a felony or misdemeanor*

81 Cambodia Daily, "Kem Sokha Removed as Assembly Vice President," 30 October 2015, <https://www.cambodiadaily.com/news/kem-sokha-removed-as-assembly-vice-president-98833/>.

82 The Constitution of the Kingdom of Cambodia, available at: <http://www.wipo.int/edocs/lexdocs/laws/en/kh/kh009en.pdf>.

83 Cambodia Daily, "Kem Sokha Ousted as National Assembly VP," 31 October 2015, <https://www.cambodiadaily.com/news/kem-sokha-ousted-as-national-assembly-vp-98913/>.

84 Phnom Penh Post, "Rainsy stripped of lawmaker status," 16 November 2015, <http://www.phnompenhpost.com/national/rainsy-stripped-lawmaker-status>.

85 Cambodia Daily, "Sam Rainsy Removed from National Assembly," 16 November 2015, <https://www.cambodiadaily.com/news/sam-rainsy-removed-from-national-assembly-100428/>; Law on the Status of National Assembly Members (Khmer version), available at: <http://www.national-assembly.org.kh/tv/kh/ViewLawFile.aspx?LawDID=104>.

86 Phnom Penh Post, "Rainsy stripped of lawmaker status," 16 November 2015, <http://www.phnompenhpost.com/national/rainsy-stripped-lawmaker-status>; Law on the Election of Members to the National Assembly (Khmer version), available at: <http://bit.ly/2nkAEOE>.

punishment by the courts and who have not yet been rehabilitated ... shall not have the right to stand as a candidate in the Election of Members of the National Assembly.” Instead, Sam Rainsy was allowed to take a seat, with the implicit assumption that the royal pardon he received in 2013 applied to this conviction, in addition to those charges explicitly cited in the pardon itself. This clear twisting of the facts and rules surrounding the pardon and Sam Rainsy’s eligibility exemplifies the extreme politicization of procedures and regulations as they relate to opposition MPs.

Sam Rainsy has previous experience with being expelled from the National Assembly as well. He had been expelled in 1995 after he was kicked out of his then-party, Funcinpec. There were no known provisions in Cambodian law allowing for his expulsion from the party under the circumstances, and Sam Rainsy challenged the move.⁸⁷ The rules at the time were murkier than they are now, however, and his most recent expulsion has therefore required a more blatant disregard for legal consistency and a willingness to undermine and erode existing parliamentary safeguards.

Um Sam An’s Temporary Ban from the National Assembly

Prior to his arrest in April 2016, CNRP MP Um Sam An was banned from the National Assembly for 15 sessions and had his salary halved for two months in July 2015 for allegedly “insulting” National Assembly President Heng Samrin.⁸⁸ The alleged “insult” stemmed from a social media post in which Um Sam An criticized Heng Samrin for failing to forward a letter signed by several CNRP MPs to Prime Minister Hun Sen.

His criticism was based on Article 96 of the Cambodian Constitution, which outlines procedures for such a request to be forwarded through the National Assembly President, as well as the National Assembly’s own internal regulations, Article 32 of which states, “All MPs are entitled to pose any questions to the Royal Government. These questions shall be in writing and conferred to via the President of the National Assembly.”⁸⁹

In advance of the decision to ban Um Sam An, CPP MP Chheang Vun threatened that his parliamentary immunity could be removed as a result of his criticism of the National Assembly President.⁹⁰ The episode demonstrated the extent to which, even in the absence of judicial harassment or outright expulsion from Parliament, opposition lawmakers face politically motivated procedural barriers to doing their jobs.

Rubber Stamping the Executive’s Political Motivations

In addition to violations of procedure, the Cambodian Parliament has, again and again, proven itself incapable of fulfilling its duty to act as a check on executive power. Instead, it has consistently rubber stamped laws and regulations passed down from the executive branch, which are often thinly veiled attempts to undermine and cripple the opposition. Although the National Assembly has acted in this fashion for many years, the following two examples from early 2017 represent an unprecedented escalation of such legislative tactics with particularly damaging impacts on the state of democracy in Cambodia.

⁸⁷ Human Rights Watch, *Cambodia: The War Against Free Speech* (September 1995), <https://www.hrw.org/legacy/summaries/s.cambodia959.html>.

⁸⁸ Phnom Penh Post, “CNRP lawmaker hit in pocket for Samrin comments,” 25 July 2015, <http://www.phnompenhpost.com/post-weekend/cnrp-lawmaker-hit-pocket-samrin-comments>.

⁸⁹ The Constitution of the Kingdom of Cambodia, available at: <http://www.wipo.int/edocs/lexdocs/laws/en/kh/kh009en.pdf>.

Internal Regulations of the National Assembly (Khmer version), available at: <http://www.national-assembly.org.kh/group-article/29>.

⁹⁰ Phnom Penh Post, “Lawmaker’s immunity threatened,” 21 July 2015, <http://www.phnompenhpost.com/national/lawmakers-immunity-threatened>.

Changes to the National Assembly's Internal Regulations



A CNRP campaign sign, Stung Treng province
(Source: APCR)

On 16 January 2017, Prime Minister Hun Sen announced plans to amend Article 48 of the National Assembly's internal regulations, which since 2014 had provided for the CNRP's official designation as a "minority group" in Parliament and for the position of "minority leader,"⁹¹ which was previously held by Sam Rainsy and which Kem Sokha had held since his December 2016 royal pardon.⁹² Article 48, which was amended to expand the power of the CNRP to raise issues in Parliament as part of the 2014 political deal between the ruling party and the opposition, also provided a framework for political negotiations, without which dialogue between parties in the National Assembly would be severely limited.⁹³ The rationale for changing this article in 2017 given by the Prime Minister and other officials was that it made negotiations between the two parties too difficult. CPP Spokesman Sok Eysan, for instance, said that "The CPP has provided a grand concession to amend the Assembly's internal regulation to create a minority group and leaders of parliamentary groups, but they [the CNRP] still cause trouble."⁹⁴

The National Assembly acted quickly to implement the Prime Minister's request. On 20 January, it was reported that 50 CPP MPs had submitted a letter to the National Assembly's Secretariat requesting that these changes in the internal regulations be made,⁹⁵ and by 31 January, the National Assembly had held a plenary session – boycotted by the CNRP – to vote on the amendment, which was unanimously approved by CPP MPs.⁹⁶

The case demonstrates the National Assembly's willingness to serve as a rubber stamp for the executive, quickly implementing the Prime Minister demands, regardless of whether the action in question is merited. It also demonstrates an increasingly limited interest on the part of the CPP in promoting dialogue and negotiation as a solution to inter-party disagreements – revealing a belief that the ruling party's twisted interpretations of provisions to persecute the opposition have been successful.

91 Article 48 provides for the formation of groups of MPs from political parties who hold at least 5 percent of seats in the National Assembly and for the official designation of a minority leader for political parties who are not in the government but who hold at least 25 percent of the seats in the National Assembly. The CNRP is the only party, aside from the CPP, that holds any seats in the National Assembly.

92 Cambodia Daily, "Prime Minister Makes Move to End Future Talks With CNRP," 17 January 2017, <https://www.cambodiadaily.com/morenews/pm-makes-move-to-end-future-talkswith-cnrp-123544/>.

93 Voice of America, "Opposition Leader Officially Appointed Minority Leader of Assembly," 22 January 2015, <http://www.voacambodia.com/a/opposition-leader-officially-appointed-minority-leader-of-assembly/2609233.html>.

94 Ibid.

95 Cambodia Daily, "CPP Makes First Move to Revoke CNRP's 'Minority' Status," 20 January 2017, <https://www.cambodiadaily.com/news/cpp-makes-first-move-to-revoke-cneps-minority-status-123756/>.

96 Reuters, "Cambodia's opposition leader loses key role ahead of elections," 31 January 2017, <http://www.reuters.com/article/us-cambodia-politics-idUSKBN15FODY>.

Amendments to the Law on Political Parties

The most dramatic and unprecedented legislative move against the opposition came in February 2017. During a speech on 2 February, Prime Minister Hun Sen announced plans to amend the Law on Political Parties (LPP) in order to provide for the dissolution of political parties if a member of the party commits a crime.⁹⁷ After being fast-tracked by the National Assembly's Standing Committee,⁹⁸ the amendments were passed by the National Assembly on 20 February 2017, during an emergency session that was boycotted by the CNRP.⁹⁹ They were subsequently approved by the Senate on 28 February and signed into law on 8 March.¹⁰⁰

The amendments to the LPP are particularly problematic on several fronts. First, additions to Article 6 prohibit political parties from carrying out activities that “*would affect the security of the state*” and from inciting to “*break up the national unity*,” provisions which are vague and leave the door open to manipulation. Second, the amended version of Article 18 now provides for the removal of an individual from a position on a party's standing, permanent, or steering committee if the individual in question is “*convicted to a prison term of a felony or a misdemeanor without having his/her sentence suspended except in cases where the sentence is pardoned by the King*.” Third, the amended Article 29 includes a wider range of prohibited sources of financing for political parties, including “*foreigners*,” which appears to be a direct attack on the CNRP, which gets much of its funding from members of the Cambodian Diaspora.¹⁰¹

Furthermore, the LPP's new Article 38 drastically expands the potential grounds for action to be taken against political parties by the executive branch, stating that “*the Ministry of Interior may take [...] measures against any political party which has acted in contradiction to the Constitution, the Law on Political Parties, and other laws currently in force in the Kingdom of Cambodia*.” These measures range from issuing notification letters to temporarily suspending the activities of political parties (without defining what constitutes as an acceptable length of time for suspension) to filing complaints with the Supreme Court to dissolve parties. The new Article 44 empowers the Supreme Court to suspend the activity of or dissolve entirely any “*political party that violate Article 6 and Article 7 of this law*,” which include the vague prohibitions listed above. The new Article 45 further empowers the the Supreme Court to prohibit “*the conduct of political activities by the leadership [of a political party that has been dissolved] for five years*.”

Similar to the amendments to the National Assembly's internal regulations stripping the CNRP of its minority group status, the CPP only needed a simple majority for amendments to the LPP to be passed. Yet again, the Parliament served as a rubber stamp for the executive, passing amendments to legislation because they were requested by the Prime Minister.

97 Phnom Penh Post, “Hun Sen mulls rules to dissolve parties for individual's wrongdoing,” 3 February 2017, <http://www.phnompenhpost.com/national/hun-sen-mulls-rules-dissolve-parties-individuals-wrongdoing>.

98 Cambodia Daily, “Law to Dissolve Political Parties Fast-Tracked,” 15 February 2017, <https://www.cambodiadaily.com/morenews/law-to-dissolve-political-parties-fast-tracked-125175/>.

99 Cambodia Daily, “Party-Busting Bill Passed in ‘Final Blow’ to Democracy,” 21 February 2017, <https://www.cambodiadaily.com/news/party-busting-bill-passed-in-final-blow-to-democracy-125486/>.

100 Radio Free Asia, “Cambodia Senate Approves Tough Political Party Law Amid Rising Threats to Opposition,” 28 February 2017, <http://www.rfa.org/english/news/cambodia/cambodia-politics-02282017162649.html>; Radio Free Asia, “Tough Political Party Bill Signed Into Law in Cambodia,” 9 March 2017, <http://www.rfa.org/english/news/cambodia/tough-political-party-bill-signed-into-law-in-cambodia-03092017132626.html>.

101 Future Forum, *2016 Political Analysis – Summary Version* (7 February 2017), <http://www.futureforum.asia/publications/>.



A motorcycle rides past a CPP campaign sign, Ratanakkiri province (Source: APHR)

Conclusion

Taken as a whole, the developments in Parliament explained above highlight several problematic trends regarding how the National Assembly – and at times, the Senate – addresses the role and position of parliamentarians. Time and again, when politically convenient, the National Assembly has failed to follow the procedures outlined in the various laws governing the role and status of MPs. This is facilitated by a lack of clarity and precision in many of the relevant articles, providing too much room for interpretation.

Moreover, the actions of the Parliament have had the effect of significantly undermining core institutions and safeguards in the parliamentary structure as part of a larger assault on the opposition. Through their repeated violations of key procedures, especially as they relate to immunity and to the opposition's role, ruling party lawmakers have threatened the future of Parliament as a functioning body and an integral part of Cambodia's democratic processes.

This has been exacerbated by their willingness to pass legislation and regulations that fail to protect Cambodia's fragile democratic institutions and only serve to put the opposition, as well as individual lawmakers, at further risk. In particular, the newly amended Law on Political Parties significantly heightens threats to the CNRP, given the number of convictions that CNRP lawmakers and officials, including in the party's leadership, have been handed in recent years. Already, opposition members who have been convicted on criminal charges, including Sam Rainsy, Um Sam An, and Hong Sok Hour, have been forced to resign from their respective parties in response to the amendments.¹⁰² The details of these and other cases, combined with the particularly vague clauses in the amended law, make it easy for the authorities to argue that CNRP members violated the law's provisions and that these violations merit that the party be dissolved. The dissolution of the CNRP would cause lasting damage not only to the party itself, but to the Parliament as a whole, which would be deprived of a significant portion of its members, as well as its remaining oversight capacity.

¹⁰² Cambodia Daily, "Jailed Opposition Members Quit Over New Law," 24 February 2017, <https://www.cambodiadaily.com/second/jailed-opposition-members-quit-new-law-125795/>.

V. CLIMATE OF FEAR

The intensified campaign targeting opposition lawmakers through judicial and procedural means has been accompanied by threatening rhetoric and actions, including violence, against MPs and others, which has contributed to a growing climate of fear in the country. Although such a climate has been a recurring feature of Cambodian political life for many years and parliamentarians have always been at risk, the country has witnessed a dramatic escalation of threats since the 2013 national election, as well as a significant instance of physical violence against MPs. These threats and actions further undermine the security of lawmakers and make it increasingly difficult for members of the opposition to effectively carry out their parliamentary functions. In the context of a politicized judiciary and pliant legislature, the prevailing climate of fear reinforces dangers posed to opposition MPs.

Physical Attacks

On 26 October 2015, two CNRP MPs – Nhay Chamroeun and Kong Sophea – were beaten by alleged pro-government protesters as they were leaving the National Assembly. On that day, a crowd had gathered outside of the National Assembly to demand Kem Sokha's removal as National Assembly Vice President, and as the two MPs were attempting to leave the National Assembly compound, they were each pulled out of their cars and brutally beaten by protesters. Their injuries were so severe that they had to be flown to Bangkok for medical treatment. Nhay Chamroeun suffered a broken nose, broken teeth, a broken cheekbone, and three fractures to his wrist, while Kong Sophea suffered a broken nose, bruising to his head and back, a sprained finger, and a torn eardrum.¹⁰³ Another protest also took place outside of Kem Sokha's home the same day, during which protestors threw rocks at the house, while Kem Sokha's wife and children were inside.¹⁰⁴

Although CPP officials denied having anything to do with the protest, witnesses claimed to have seen members of Hun Sen's personal bodyguard unit among the crowd outside of the National Assembly.¹⁰⁵ Just a little over a week later, three members of the Royal Cambodian Armed Forces – Sot Vanny, Chhay Sarith, and Mao Hoeung – were arrested and charged with the beating of the two MPs, including one count of intentional violence with aggravating circumstances (Article 218 of the Criminal Code) and two counts of property damage (Article 411 of the Criminal Code).¹⁰⁶ In April 2016, *The Phnom Penh Post* discovered that the three men were members of Prime Minister Hun Sen's personal bodyguard unit.¹⁰⁷

During the trial, the men admitted to having gone to the protest to “collect information” on behalf of the bodyguard unit's “intelligence group,” as well as to the beating itself, but did not name either

103 Human Rights Watch, *Dragged and Beaten: The Cambodian Government's Role in the October 2015 Attack on Opposition Politicians* (26 May 2015), <https://www.hrw.org/report/2016/05/26/dragged-and-beaten/cambodian-governments-role-october-2015-attack-opposition>.

104 Voice of America, “Cambodian Politics Turning Violent,” 29 October 2015, <http://www.voanews.com/a/cambodian-politics-turning-violent/3027787.html>.

105 Human Rights Watch, *Dragged and Beaten: The Cambodian Government's Role in the October 2015 Attack on Opposition Politicians* (26 May 2015), <https://www.hrw.org/report/2016/05/26/dragged-and-beaten/cambodian-governments-role-october-2015-attack-opposition>.

106 Phnom Penh Post, “Three RCAF members charged for beatings,” 5 November 2015, <http://www.phnompenhpost.com/national/three-rcaf-members-charged-beatings>.

107 Phnom Penh Post, “Of 16 who assaulted MPs, only three, all Bodyguard Unit members, face trial,” 28 April 2016, <http://www.phnompenhpost.com/national/16-who-assaulted-mps-only-three-all-bodyguard-unit-members-face-trial>.

their commanding officers or who had given them the order to attend.¹⁰⁸ On 27 May 2016, the three were convicted on the intentional violence charge (the property damage charges were dropped by the judge due to lack of evidence) and given four-year prison sentences, with three of those years suspended by the judge.¹⁰⁹ They were released from detention on 4 November 2016 after serving just one year in prison,¹¹⁰ and, two weeks later, Sot Vanny and Mao Hoeung were promoted in rank from lieutenant colonel to colonel via a sub-decree signed by Prime Minister Hun Sen.¹¹¹ The third, Chay Sarith, was promoted to the rank of brigadier general shortly thereafter.¹¹²

In late November 2016, leaked phone and online conversations, allegedly between former CNRP supporter Thy Sovantha and one of Prime Minister Hun Sen's sons, Hun Manith (a brigadier general in the army and the director of the Defense Ministry's military intelligence unit), specifically referenced the October 2015 attacks against the two MPs and implicated Thy Sovantha in the planning of the attack, while clearly showing that Hun Manith had known about the plan and who was behind it.¹¹³ Although authorities have pledged to investigate the issue, they have intimated that the investigation will focus on how the messages were leaked in the first place, as well as any associated national security concerns, rather than the pair's alleged role in the protests that led to the beating of the two MPs.¹¹⁴



CNRP MP Nhay Chamroeun sits after being beaten outside the National Assembly in October 2015, Phnom Penh (Source: CNRP)

108 Cambodia Daily, "Hun Sen's Bodyguards Confess to Beating of Lawmakers," 11 May 2016, <https://www.cambodiadaily.com/news/hun-sen-s-bodyguards-confess-to-beating-of-lawmakers-112436/>.

109 Phnom Penh Post, "Soldiers to serve five months for National Assembly attacks," 27 May 2016, <http://www.phnompenhpost.com/national/soldiers-serve-five-months-national-assembly-attacks>.

110 Phnom Penh Post, "Bodyguard Unit trio released one year after MP beatings," 7 November 2016, <http://www.phnompenhpost.com/national/bodyguard-unit-trio-released-one-year-after-mp-beatings>.

111 Phnom Penh Post, "MP attackers promoted," 28 December 2016, <http://www.phnompenhpost.com/national/mp-attackers-promoted>.

112 Cambodia Daily, "Third Elite's Bodyguard Promoted After Attack on Lawmaker," 27 January 2017, <https://www.cambodiadaily.com/news/third-bodyguard-promoted-after-attack-on-lawmaker-124129/>.

113 Cambodia Daily, "Alleged Chats Between Thy Sovantha and Hun Manith Leaked," 29 November 2016, <https://www.cambodiadaily.com/news/alleged-chats-thy-sovantha-hun-manith-leaked-121166/>.

114 Phnom Penh Post, "'Manith message' inquiry pledged," 30 November 2016, <http://www.phnompenhpost.com/national/manith-message-inquiry-pledged>.

The impact of the beatings has been extensive, and not solely for the two MPs who were beaten. On 7 October 2016, CNRP MPs refused to attend the new session of Parliament, with CNRP MP Yim Sovann attributing the decision to a perceived threat of physical intimidation, recalling the past year's events.¹¹⁵ Other parliamentarians have told APHR that they worry about further attacks and their own personal safety in light of the incident. This has, in turn, undermined their ability to fulfill their parliamentary duties and is damaging the institution as a whole, as parliamentarians report being uncomfortable speaking out, both in Parliament and in meetings with constituents, particularly regarding controversial topics.

Threats of Violence

Adding to these fears of violence has been a context of increasing threats and intimidation aimed at individuals, including members of the opposition and civil society, made by Prime Minister Hun Sen himself and by others within or affiliated with the ruling party. In August 2015, the Prime Minister threatened the parliamentarians charged with insurrection the previous summer (see "Judicial Attacks" section) that new summonses could be issued and that their parliamentary immunity would not protect them.¹¹⁶ In August 2016, he directly referenced SRP Senator Thak Lany during a speech, noting that "*if you dare to accuse me, you must be ready to face court. If you dare escape, you must be prepared to be arrested.*"¹¹⁷

In addition to these public threats made by the Prime Minister, the opposition has repeatedly claimed that many of its members received threats via phone calls and text messages. In early October 2016, several CNRP MPs confirmed to *The Phnom Penh Post* that messages sent via WhatsApp by Prime Minister Hun Sen to Kem Sokha threatened "*bloodshed*"¹¹⁸ if his son, Hun Manet, was confronted by opposition protests during a trip to Australia, reminding Kem Sokha of previous violence against its members.¹¹⁹ While the CPP has denied that the Prime Minister had sent those messages,¹²⁰ CNRP officials have confirmed separately to APHR that they do receive threatening messages and phone calls from time to time, especially individuals considered important within the party.¹²¹

The language of violence and threats has also been picked up by others, including CPP activists. In December 2016, Srey Chamroeun, a CPP activist and close associate of Thy Sovantha, the former CNRP youth activist threatening to sue Kem Sokha for defamation (see "Judicial Attacks" section), posted a series of threats aimed at Kem Sokha on Facebook, one of which said "*I will hold demonstrations to demand that Kem Sokha apologizes to Thy Sovantha publicly. If not?????*", accompanied by photographs of Thy Sovantha shooting at a target with a pistol.¹²² Another post, this time accompanied by photographs of various rifles, pistols, and ammunition, said "*Kem Sokha be careful!!!!!!*".¹²³

115 Associated Press, "Cambodian opposition, citing danger, stays out of parliament," 7 October 2016, <http://bigstory.ap.org/article/438f88b5840c4bcd82d8d1d4502b3cb6/cambodian-opposition-citing-danger-stays-out-parliament>.

116 Phnom Penh Post, "Vanishing act: Immunity is often ethereal," 14 August 2015, <http://www.phnompenhpost.com/national/vanishing-act-immunity-often-ethereal>.

117 Phnom Penh Post, "Hun Sen praises CPP while threatening opposition in speech," 3 August 2016, <http://www.phnompenhpost.com/national/hun-sen-praises-cpp-while-threatening-opposition-speech>.

118 The messages allegedly used the Khmer term "bangho chheam," which literally translates to "flowing of blood."

119 Phnom Penh Post, "PM's texts unnerved opposition ahead of National Assembly return: lawmakers," 10 October 2016, <http://www.phnompenhpost.com/national/pms-texts-unnerved-opposition-ahead-national-assembly-return-lawmakers>.

120 The Phnom Penh Post, "CPP denies PM sent threatening messages," 11 October 2016, <http://www.phnompenhpost.com/national/cpp-denies-pm-sent-threatening-messages>.

121 Interviews conducted by the authors on 29 and 30 November 2016.

122 Cambodia Daily, "Threats, Guns Enter Crusade Against Kem Sokha," 12 December 2016, <https://www.cambodiadaily.com/news/threats-guns-enter-crusade-kem-sokha-121837/>.

123 Ibid.

Disappointingly, the Interior Ministry on 14 December 2016 said it would not open an investigation into the threats unless “interested parties” filed a complaint.¹²⁴ This contrasts sharply with how authorities have reacted to information posted on Facebook in previous cases, such as the alleged recordings of Kem Sokha and his mistress, into which an investigation was launched almost immediately without either party filing a complaint.

Intimidation has also come in the form of shows of military strength. On 31 August 2016, military helicopters, navy vessels, and troops carried out “exercises” in close proximity to the CNRP’s headquarters, where Kem Sokha was still holed up.¹²⁵ Although government and military spokespersons denied the exercises had anything to do with the opposition, many CNRP activists and party officials saw these as little more than an attempt to scare them and frighten away supporters.¹²⁶ Two weeks later, Prime Minister Hun Sen posted a message on Facebook saying he ordered “all competent forces to be ready to get rid of all illegal activities in order to protect the happiness of the people, no matter the cost [...] hit the snake, hit it right on the head first.”¹²⁷ Two hours after, 30 to 40 military trucks drove slowly past the CNRP headquarters, parking in front of the building for over half an hour, while machine-gun laden speedboats passed by on the Tonle Bassac River, which flows behind the building.¹²⁸

Such threats and intimidation reflect a larger violent narrative pushed by Prime Minister Hun Sen and the ruling party, aimed at solidifying their hold on power.

Such threats and intimidation reflect a larger violent narrative pushed by Prime Minister Hun Sen and the ruling party, aimed at solidifying their hold on power. Over the years, the Prime Minister has repeatedly warned that any electoral victory by the opposition could lead the country back into civil war and internal strife. A month before the 2013 national election, the Prime Minister told crowds that he had “real indicators showing that war will take place if these guys [the CNRP] are elected.”¹²⁹

These threats did not diminish after the CPP and CNRP reached a political deal in 2014. Instead, they have become commonplace since the end of the “culture of dialogue” between the parties in mid-2015. In October 2015, Prime Minister Hun Sen warned that if the military and police commanders were to be replaced under a hypothetical CNRP-led government, “these groups will bring in their forces and react [...] an internal war will erupt.”¹³⁰ The same month, the Prime Minister also warned of “an internal war” that would erupt if the CNRP were to enact its plan to establish a tribunal to try cases of tycoons suspected of land grabs.¹³¹

124 Cambodia Daily, “No Probe Into Sokha Threats Without Complaint, Ministry Says,” 15 December 2016, <https://www.cambodiadaily.com/news/no-probe-sokha-threats-without-complaint-ministry-says-122010/>.

125 Phnom Penh Post, “Exercises bring military helicopters and vessels to CNRP’s doorstep,” 1 September 2016, <http://www.phnompenhpost.com/national/exercises-bring-military-helicopters-and-vessels-cnmps-doorstep>.

126 Ibid.

127 Cambodia Daily, “Hun Sen Ratchets Up Threats Against CNRP,” 14 September 2016, <https://www.cambodiadaily.com/news/hun-sen-ratchets-up-threats-against-cnmp-117970/>.

128 Ibid.

129 Cambodia Daily, “Hun Sen Says Civil War Would Be Opposition’s Fault,” 11 June 2013, <https://www.cambodiadaily.com/elections/hun-sen-says-civil-war-would-be-oppositions-fault-30249/>.

130 Cambodia Daily, “Hun Sen, Pondering Defeat, Has War on Mind,” 26 October 2015, <https://www.cambodiadaily.com/news/hun-sen-pondering-defeat-has-war-on-mind-98221/>.

131 Cambodia Daily, “Hun Sen Warns Opposition of Backlash by Armed Forces,” 20 October 2015, <https://www.cambodiadaily.com/news/hun-sen-warns-opposition-of-backlash-by-armed-forces-97603/>.

Conclusion

These various threats, demonstrations of physical strength, and violent attacks have created a climate of fear in Cambodia, making it more than clear that criticism will not be tolerated under any circumstances. Moreover, similar to the result of actions against MPs by the judiciary and the legislature, there is a palpable fear that anyone could be targeted by physical violence.

This fear of “being next” is reinforced by Prime Minister Hun Sen’s recurring rhetoric on the subject. In June 2016, during a speech at the Royal University of Phnom Penh, he told the audience, in apparent reference to the opposition’s support for fellow parliamentarians targeted by judicial action, “*Some people bring the whole party in to protect one individual who has done wrong. We hear the word ‘protest.’ Please don’t threaten that in this way [...] I will not tolerate it.*”¹³² In other words, not only are criticism of the ruling party and challenges to its popularity not tolerated, but neither is support for one’s fellow parliamentarians and party officials.

VI. CONCLUSION

The Parliament’s passage in February 2017 of amendments to the Law on Political Parties, which grant unprecedented powers to the executive and judicial branches to suspend and dissolve parties on the basis of vague legislative provisions and politically motivated legal convictions, marked the apex of an ongoing assault on parliamentary democracy in Cambodia. The lead-up to their passage was characterized by a dramatic increase over the past several years in the number of opposition parliamentarians targeted by the ruling party and subjected to judicial action, threats, and physical violence, with limited outcry from the international community. This has significantly impacted the opposition’s ability to function – both within Parliament and outside it – and has created a climate of fear, which casts a dark shadow over all of Cambodian society. The events further threaten to undermine the credibility of upcoming commune-level and national elections in 2017 and 2018, respectively.

Although the results of the 2013 national election, which saw a greater balance of power in the National Assembly than had previously been the case, should have resulted in a more significant role for the opposition in the legislative process, the recurrent boycotts by the CNRP of the National Assembly, which have been in part due to these threats and violence, combined with procedural maneuvering by the ruling party, have resulted in the CPP essentially being the only player in this process.

The onslaught of judicial action, procedural violations, legislative maneuvers, physical attacks, and threats have therefore had a significant impact on the opposition’s capacity to act as a balance to the ruling party and to fulfill its legislative, representative, and oversight roles. As a result of these attacks and threats, parliamentarians are self-censoring, in particular when it comes to sensitive topics, such as land rights or judicial reform. Meanwhile, removing parliamentary immunity despite clear political motivations behind proposed charges has become normal practice, and the failure to

¹³² Radio Free Asia, “Cambodia’s Hun Sen Issues a Warning,” 13 June 2016, <http://www.rfa.org/english/news/cambodia/cambodias-hun-sen-06132016165601.html>.

adhere to proper procedures and legal requirements has become normalized as well. All of this has had the broader impact of weakening the Parliament as an institution.

This situation has also had a significant impact on broader issues of civil society space, democracy, freedom of expression, and other fundamental rights. The case against ADHOC staffers – and the fact that they were dragged into a political case – has heightened fears that organizations and activists may be increasingly at risk of judicial harassment. Civil society organizations have reported to ACHR that self-censorship is on rise, and that they are often reluctant to communicate with members of the opposition, even for perfectly legitimate reasons.

As many of the examples cited in this report have demonstrated, there seems to be a higher risk for people who speak out on controversial topics and who have popular support. These trends have been noted by NGOs, many of whom say that they are toning down their advocacy calls and recommendations to the government. After the 2013 elections, many people saw the opposition as a watchdog and a protector of civil society. Many of these same individuals say they are now afraid to speak out after seeing the opposition come under such severe threat.

While the ways in which criticism is repressed are manifold and the impacts are plenty, they are all underlined by clear politicization and abuse of the relevant statutes by the ruling party, with the aim to undermine the opposition and cement its hold on power. Urgent action is needed to protect Cambodia's fragile democratic space and to ensure that fundamental rights, including those of parliamentarians, are respected.

Recommendations

To the National Assembly and Senate:

- Repeal amendments to the Law on Political Parties passed by Parliament in February 2017 and signed into law in March 2017;
- Amend the Law on the Status of National Assembly Members and the Law on the Status of Senate Members in order to:
 - Address ambiguities regarding the scope of parliamentary immunity, in particular as it relates to the definition of “*in the exercise of their duties*”;
 - In the context of votes to lift parliamentary immunity, allow lawmakers in question the right to a defense;
 - Provide procedures for appealing decisions to lift parliamentary immunity; and
 - Address ambiguities with regard to the procedures for restoring parliamentary immunity.
- Amend the Code of Criminal Procedure to address ambiguities regarding crimes that are committed “*in flagrante delicto*”;
- Decriminalize defamation (Article 305 of the Criminal Code) and insult of public officials (Article 502 of the Criminal Code), and repeal any additional provisions in Cambodian legislation that fail to adhere to the Constitution and to international law regarding freedom of expression;
- Ensure that all legal and procedural guarantees related to the lifting of parliamentary immunity are fully upheld, including:

- Requirements that decisions made by the Standing Committee between sessions are then submitted to the plenary for a vote;
- Provisions that all votes on lifting immunity be held only when a two-thirds quorum has been reached; and
- Provisions that all votes on lifting immunity and/or authorizing the detention and prosecution of parliamentarians be approved by a two-thirds majority of the entire legislative body.
- Clarify procedures for National Assembly and Senate Standing Committee decisions related to authorizing the detention and prosecution of parliamentarians; and
- Refuse to provide authorization to prosecute in cases that show clear indication of being pursued for political reasons, as well as in alleged cases of “*flagrante delicto*” that violate the provisions of Article 86 of the Code of Criminal Procedure.

To the Executive and Judicial Branches:

- Refrain from using inflammatory and threatening rhetoric;
- Ensure respect for judicial due process, including (but not limited to) through:
 - Refusing to pursue cases against parliamentarians whose immunity has not been lifted or for whom authorization to prosecute has been provided through a vote that has failed to adhere to the relevant legislative provisions;
 - Refusing to prosecute cases that show clear indication of being pursued for political reasons; and
 - Officially dropping cases that are not being actively pursued.
- Implement measures to ensure the physical safety of parliamentarians while exercising their parliamentary duties;
- Duly investigate all reported threats made against parliamentarians; and
- In light of leaks alleging involvement of Thy Sovantha and Hun Manith into the protests at the National Assembly and Kem Sokha’s house in October 2015, reopen the investigation of the attacks against MPs Nhay Chamroeun and Kong Sophea and conduct a full investigation into these allegations.

ANNEX I



AN ANALYSIS OF PARLIAMENTARY IMMUNITY

AN ANALYSIS OF PARLIAMENTARY IMMUNITY

Over the past several years, the issue of parliamentary immunity has increasingly been discussed in Cambodia in the context of the rights and privileges of members of Parliament (MPs), and particularly those of the opposition. As discussed below, Cambodian lawmakers are afforded parliamentary immunity in the country's Constitution, as well as other statutes, but this immunity has been lifted seemingly without justification and without adherence to the legislation and regulations that govern it. In many cases, there seems to be confusion over what parliamentary immunity under Cambodian law actually entails. This is, in part, due to legislative language that leaves a large amount of room for interpretation, as well as a lack of understanding as to the context and merits of parliamentary immunity. The Legal Analysis below presents a review of Cambodian legal provisions on parliamentary immunity and highlights the particularly problematic and vague aspects of these provisions.

I. Parliamentary Immunity: An Introduction

Parliamentary immunity exists as a means to protect a group of individuals who are particularly vulnerable due to the political nature of the work that they undertake. As MPs are often required to take up controversial positions in order to effectively represent their constituents and carry out parliamentary oversight functions, parliamentary immunity is often critical to ensuring that they have the space and freedom to fulfill these roles. As such, immunity provides a way to guarantee the independence of not only individual parliamentarians, but also a legislature as a whole. As the European Court of Human Rights has held:

“While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament [...] call for the closest scrutiny on the part of the Court.”¹

Definitions and Scope of Parliamentary Immunity

Parliamentary immunity generally includes two main categories: absolute immunity (also called non-liability, substantive or functional immunity, or parliamentary privilege) and relative immunity (also called inviolability or personal immunity). The European Commission for Democracy Through Law's (Venice Commission) Report on the Scope and Lifting of Parliamentary Immunity defines absolute immunity or non-liability as “*meaning immunity against any judicial proceedings for votes, opinions and remarks related to the exercise of parliamentary office, or in other words, a wider freedom of speech than for ordinary citizens.*”² Relative immunity, or inviolability, meanwhile is defined as “*meaning special legal protection for parliamentarians accused of breaking the law, typically against arrest, detention and prosecution, without the consent of the chamber to which they belong.*”³

In other words, absolute immunity provides additional freedom of speech protections for parliamentarians exercising duties specifically related to their parliamentary mandate, while relative immunity provides a mechanism for legislatures to stop politically motivated prosecutions against members.

¹ European Court of Human Rights (ECtHR), *Castells v. Spain* (no. 11798/85), 23 April 1992, para. 42.

² European Commission for Democracy Through Law (Venice Commission), *Report on the Scope and Lifting of Parliamentary Immunity* (March 2014), [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)011-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)011-e).

³ *Ibid.*

Beyond their definitions, there are additional differences between absolute and relative immunity. First, the latter is less widespread and, where it does exist, more narrowly construed. Moreover, as the European Commission explains with regard to relative immunity, “*there is no common model and great variety both as to what kind of legal offences are covered and as to what legal reactions the members are protected against [...] there is also great differences in how these are applied in practice, and in some countries they are considered outdated and not invoked.*”⁴ Most importantly, relative immunity can be lifted, whereas absolute immunity, in most countries, cannot be.⁵

In contrast to relative immunity, absolute immunity is a much more widely accepted institution. Nevertheless, what are considered to be “parliamentary duties” or “the exercise of parliamentary office” vary across countries. In many countries, this covers freedom of speech both outside and inside of the physical parliament. In others, only speech made during parliamentary sessions is covered.⁶ For instance, the Court of Justice of the European Union has ruled that for Members of the European Parliament, absolute immunity is “*intended to apply to votes and opinions expressed in the premises of the European Parliament,*” but that “*it is not impossible that an opinion expressed outside the European Parliament may amount to an exercise of a Member’s duties.*”⁷

The scope of absolute immunity, including whether it applies to speech made outside of the physical premises of parliament, is also an evolving concept. As a 2004 European Parliament report notes:

*“Historically parliamentary privilege was limited to speech in Parliament because, at the time, political discourse was concentrated within Parliament. In modern democracies, political discourse and debate on matters of public relevance takes place in a much broader forum, which includes printed and electronic media and the internet. Members of Parliaments are now expected to engage in dialogue with the civil society and present their ideas not only on the floor of Parliament, but also in the fora that civil society provides; consequently, the criterion determining which statements were made in the exercise of a Member’s duties cannot be spatial, since the spatial criterion would be too narrow.”*⁸

The sections below analyze Cambodian legislation regarding parliamentary immunity within this context of international norms and jurisprudence on the matter.

II. Parliamentary Immunity Under Cambodian Law

Definition and Scope of Parliamentary Immunity

Cambodia’s 1993 Constitution guarantees parliamentary immunity for members of the National Assembly in Article 80 and for Senators in Article 104 (see box below: “Breakdown of Cambodian Constitution Articles on Parliamentary Immunity”). These articles explicitly state that lawmakers “*shall enjoy parliamentary immunity*” and that no lawmakers “*shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his/her duties,*” a clear provision for absolute immunity. The Articles go on to specify that prosecutions, arrests, and detentions of lawmakers can only be undertaken with the explicit approval of the respective legislative body (or its Standing Committee in between sessions), which seemingly refers to relative immunity.

4 Ibid.

5 Ibid.

6 IPU, *The Immunities of Members of Parliament* (September 1998), <http://www.ipu.org/ASGP-e/Myttenaere.pdf>.

7 European Parliament, Directorate-General for Internal Policies, *The Immunity of Members of the European Parliament* (2014), available at: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/509981/IPOL_IDA\(2014\)509981_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/509981/IPOL_IDA(2014)509981_EN.pdf).

8 Ibid.

BREAKDOWN OF CAMBODIAN CONSTITUTION ARTICLES ON PARLIAMENTARY IMMUNITY

(Text from Article 80, which covers the National Assembly; Article 104 contains identical language, while substituting “Senator” in place of “Member of the National Assembly”)

Overall guarantee of parliamentary immunity:

“Members of the National Assembly shall enjoy parliamentary immunity.”

Absolute immunity provision:

“No Member of the National Assembly shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his/her duties”

Relative immunity provision:

“A Member of the National Assembly may only be prosecuted, arrested or detained with the permission of the National Assembly or by the Standing Committee of the National Assembly between sessions, except in cases of flagrant delicto offences”

Procedure for “flagrante delicto” cases:

“In that case, the competent authority shall immediately report to the National Assembly or to the Standing Committee and request permission. The decision of the Standing Committee of the National Assembly shall be submitted to the National Assembly at its next session, for approval for a two-third majority vote of all Members of the National Assembly”

Provision to suspend any existing case against a lawmaker:

“In any case, the detention or prosecution of a Member of the National Assembly shall be suspended if the National Assembly requires that the detention or prosecution be suspended by a three quarter majority vote of all Members of the National Assembly”

An issue with the Constitution’s language on parliamentary immunity is the lack of a specific definition of “during the exercise of his/her duties.” The Law on the Status of the National Assembly Members (LSNAM) and the Law on the Status of Senate Members (LSSM), however, define parliamentary immunity more specifically in Article 4,⁹ explicitly splitting the provision into two parts: absolute and relative immunity. The first – absolute immunity or non-liability – is “to ensure the expressing of opinions or ideas in any decision-making by the National Assembly members/Senators in the framework of exercising their duties.” The second – relative immunity or inviolability – is to “ensure that the National Assembly members/Senators are free from being prosecuted, detained or arrested.”¹⁰

Although the distinction between absolute immunity and relative immunity in Article 4 provides a bit more clarity as to the scope of parliamentary immunity under Cambodian law, the language still provides too much room for interpretation. Again, the phrase “in the framework of exercising their duties” is not further specified. In addition, the phrase “any decision-making” could be either interpreted narrowly, to refer only to decision-making processes within the Parliament itself, or

⁹ The LSNAM and LSSM include nearly identical language in the corresponding articles. For the sake of space and clarity, this Annex references both the LSNAM and LSSM articles together, and all article numbers referenced correspond to both laws. The text from those articles reproduced here uses “National Assembly member/Senator” throughout, though the individual statutes explicitly refer only to the relevant type of legislator (i.e. LSNAM refers only to “National Assembly members,” and LSSM refers only to “Senators”).

¹⁰ Law on the Status of National Assembly Members (Khmer version), available at: <http://www.national-assembly.org.kh/tv/kh/ViewLawFile.aspx?LawDID=104>; Law on the Status of Senate Members (Khmer version), available at: <http://www.national-assembly.org.kh/tv/kh/ViewLawFile.aspx?LawDID=154>.

more broadly, to cover activities such as public speeches, visits to constituencies, and investigative activities, as those may lead to decision-making by parliamentarians.

Furthermore, there is no mention as to whether immunity is retroactive, that is, whether an MP can be prosecuted for crimes committed before taking office without having his or her immunity lifted first. On this point, it seems that authorities have argued that they can (see, for instance, the case of Chan Cheng described in the “Judicial Attacks” section of this report).

The European Parliament has held that relative immunity also covers “*actions committed by the Member before his/her election,*” effectively shielding MPs from “*being tried, during their mandate, even for facts committed before its beginning – but only until they are MEPs.*”¹¹ In other words, relative immunity must be lifted before a prosecution can be undertaken, regardless of when the alleged crime was committed. Once an MP’s term is over, however, relative immunity no longer applies and he or she can be tried for alleged crimes committed both before taking office and during the mandate.¹²

Additional confusion arises from Article 5 of the LSNAM and the LSSM, which states that “*Members of the National Assembly/Senators shall not abuse their parliamentary immunity to harm the dignity of others, the good traditions of society, public order and national security.*” Not only are terms such as “*the dignity of others*” and “*the good traditions of society*” ill-defined and arbitrary, but the article itself seems only to further undermine the fundamental concept of parliamentary immunity by providing an exceedingly vague justification for voiding or lifting immunity. Although it is unclear what consequences may arise from such “*abuses,*” the article has the effect of qualifying parliamentary immunity.

As noted above, international jurisprudence is split, with jurisdictions applying varied definitions as to the spatial, temporal, and substantive scope of immunity. In many countries, case law often provides further insights as to how “*in the exercise of parliamentary duties*” should be interpreted, when not already specified sufficiently in the legislation. However, this is not the case in Cambodia, and the endemic lack of independence of Cambodia’s judiciary makes the lack of clarity in Cambodian law particularly problematic.

Lifting Parliamentary Immunity

Reading Article 4 of the LSNAM and LSSM in light of international jurisprudence, one can assume that this article implies that absolute immunity can never be lifted, while relative immunity can, under the procedures laid out in subsequent articles. Articles 7 through 11 of the LSNAM and LSSM provide for the lifting of parliamentary immunity of a National Assembly member or Senator, although they problematically do not specify that those provisions should only be utilized for the lifting of relative immunity. While it should be assumed, based on context and international jurisprudence, that absolute immunity cannot be lifted under any circumstances, it is unclear whether the authorities in Cambodia are under that same impression.

¹¹ European Parliament, Directorate-General for Internal Policies, *The Immunity of Members of the European Parliament* (2014), available at: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/509981/IPOL_IDA\(2014\)509981_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/509981/IPOL_IDA(2014)509981_EN.pdf).

¹² Ibid.

Article 7

The accusation, arrest, or detention of any National Assembly member/Senator who commits a crime shall be made only in accordance with the law and procedures and only once his/her parliamentary immunity has first been removed.

Article 8

The request for removing the parliamentary immunity of any National Assembly member/Senator shall be submitted by the Minister of Justice to the National Assembly/Senate President and shall enclose a statement of reasons.

Article 9

The removal of the parliamentary immunity during the National Assembly/Senate sessions shall comply with the following procedures:

- The National Assembly/Senate may convene a meeting in camera at the request of the National Assembly/Senate President or at least one tenth of the members of the National Assembly/Senate or the Prime Minister.*
- The quorum of the meeting is over one third of all Members of the National Assembly/Senators.*
- The adoption shall be made by two-thirds majority vote of all Members of the National Assembly/Senators.*

Article 10

Between sessions of the National Assembly/Senate, the Standing Committee of the National Assembly/Senate shall convene and adopt in accordance with the National Assembly/Senate Internal Rules of Procedure.

Article 11

Any decision made by the Standing Committee of the National Assembly/Senate shall be submitted to the National Assembly/Senate at its next session for adoption by a two-thirds majority vote of all Members of the National Assembly/Senators.

Although no specific guidance is given regarding the basis on which decisions to lift immunity should be made, the intent of the law – and of relative immunity in general – is to provide Parliament with the authority to protect parliamentarians from political prosecutions. The European Parliament describes the common practice of its Committee on Legal Affairs with respect to decisions to lift immunity:

*“In particular, the Committee’s practice has been to propose to waive immunity unless there is a *fumus persecutionis*, that is to say, a well-founded suspicion that the legal proceedings have been instituted with the intention of causing political damage to the Member [...] Moreover, in the past Parliament has clarified the concept of *fumus persecutionis* in general terms: thus, when a prosecution is initiated by a political adversary, without proof to the contrary, immunity is not to be waived if there are reasons to believe that it aims to damage the Member (not to obtain reparation); proceedings based on anonymous accusations and requests made a long time after the alleged facts*

are to be treated as indicia of fumus persecutionis; and the failure to prosecute other participants in the alleged offence, so that the MEP alone has been criminally charged for a fact involving a plurality of suspects, has also been treated as suspicious.”¹³

Many of these indicators have been present in the judicial proceedings against oppositions MPs in Cambodia, as laid out in this report.

Another problem with the abovementioned articles of the LSNAM and LSSM is the fact that they make no mention of a parliamentarian’s right to defense, nor do they include an appeal procedure for parliamentarians who have had their immunity stripped. The Inter-Parliamentary Union (IPU) has held that “it is a principle of natural justice that parliamentarians be heard and entitled to defend themselves, even if such right is not explicitly mentioned in relevant law.”¹⁴ Particularly given the politicized nature of most of the Parliament’s decisions in Cambodia, the lack of a specific mention of a right to a defense and appeal is especially problematic.

The Venice Commission in its 2014 Report on the Scope and Lifting of Parliamentary Immunities provided best practices for procedures to lift inviolability, which included, among others, the following aspects:¹⁵

- “The request should be assessed either by an appropriate standing committee or by a special committee, reflecting the political composition of parliament;”
- “The committee responsible should if possible seek assistance from outside experts that are of undoubted integrity and independence;”
- “The committee should have the right to ask the competent authorities for any information or explanation that it deems necessary in order to assess the case;”
- “The member concerned should have the right to be represented, either by another member or by outside counsel;”
- “The member concerned should have access to the documents of the case, and should have the opportunity to be heard and to present any document or other form of evidence deemed by the member to be relevant;”
- “The committee should assess the case on the basis of the relevant and established criteria, the arguments put forward by the parties, and the facts of the case, and not on any other considerations;”
- “The committee should not make any examination of the merits of the case in question and should not, under any circumstances, pronounce on the guilt or otherwise of the member concerned, or on whether or not the allegations made justify prosecution;”
- “The committee should make a proposal for a reasoned decision on whether to lift or maintain inviolability, making clear the criteria on which the conclusion is based;”
- “The proposal of the committee should include all aspects of the request, and should consider whether inviolability may be lifted partially, and from what sorts of legal

¹³ European Parliament, Directorate-General for Internal Policies, *The Immunity of Members of the European Parliament* (2014), available at: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/509981/IPOL_IDA\(2014\)509981_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/509981/IPOL_IDA(2014)509981_EN.pdf).

¹⁴ UNDP, *Parliamentary Immunity – Background Paper prepared by the Inter-Parliamentary Union* (September 2006), available at: <http://www.agora-parl.org/sites/default/files/UNDP-IPU%20-%20Parliamentary%20Immunity%20-%202006%20-%20EN%20-%20Parliamentary%20Institution.pdf>.

¹⁵ The Venice Commission’s 2014 report provides a full list of best practices for procedures to lift inviolability: European Commission for Democracy Through Law (Venice Commission), *Report on the Scope and Lifting of Parliamentary Immunity* (March 2014), [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)011-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)011-e).

action the member should be immune (arrest, detention, prosecution or punishment), as well as the duration of any form of inviolability;”

- “The proposal of the committee should be considered and decided by the plenary at the earliest opportunity and without any delay. The plenary session should be open and discussions should be confined to the arguments for and against the proposal.”

Flagrante Delicto Cases

Under the Cambodian Constitution, an exception to the prohibition on the prosecution, arrest, and detention of lawmakers is made for so-called “*flagrante delicto*” cases, although the Constitution still demands that the competent authorities report to the parliamentary body after arrest and “request permission.” Similar provisions are found in Article 12 of the LSNAM and LSSM, which states that “In the event that any Member of the National Assembly/Senate commits a crime in *flagrante delicto*, the competent authority may prosecute, detain or arrest him/her and shall immediately notify the National Assembly/Senate (or to the Standing Committee between the sessions) for a decision.”

There is a lack of clarity in the LSNAM and LSSM as to what the “competent authorities” are supposed to be asking permission for and what form that permission should take in “*flagrante delicto*” cases. Although it is implied that the relevant body is to make a decision on the legality of the case (i.e. that the case is not political), the LSNAM and LSSM make no mention of the proper procedure to follow, particularly whether the decision should be approved by a certain percentage of the plenary and/or Standing Committee. Nevertheless, while this is not specified in the LSNAM or LSSM, the Constitution does include a requirement that such decisions made by the Standing Committee be forwarded to the plenary at its next session and that those decisions must be approved by a two-thirds majority vote of all members of the relevant legislative body. Therefore, although this omission from the LSNAM and the LSSM is problematic, Cambodian legal hierarchy is clear that the Constitution, which does include greater specificity on this question, trumps any subsequent legislation.

It should be noted that providing an exception for parliamentarians caught “*in flagrante delicto*” is a fairly standard feature of legislation governing parliamentary immunity. It is generally assumed that the nature of such cases make it extremely difficult, if not impossible, for them to be politically motivated.¹⁶ However, as the cases examined in depth in this report have demonstrated, this is not the case in Cambodia. In fact, most of the “*flagrante delicto*” cases against parliamentarians have included evidence of being of a political nature, such as being pursued years after the alleged facts, which, as mentioned above, is typically treated as a red flag.

Indeed, in a 2006 paper prepared for the United Nations Development Program (UNDP), the IPU noted that, “Although *flagrante delicto* is a logical restriction on parliamentary inviolability [...] it may serve as an ideal loophole for arresting a parliamentarian protected by immunity. As the experience of the IPU Committee on the Human Rights of Parliamentarians has shown, *flagrante delicto* is sometimes easily invoked even failing any ingredients of a *flagrante delicto* offence [...] The Committee has consequently recalled that a broad interpretation of *flagrante delicto* may amount to voiding immunity itself of any real meaning.”¹⁷

¹⁶ Ibid.

¹⁷ UNDP, *Parliamentary Immunity – Background Paper prepared by the Inter-Parliamentary Union* (September 2006), available at: <http://www.agora-parl.org/sites/default/files/UNDP-IPU%20-%20Parliamentary%20Immunity%20-%202006%20-%20EN%20-%20Parliamentary%20Institution.pdf>.

Suspending Cases

The Constitution, the LSNAM, and the LSSM all provide for the suspension of an ongoing case against a parliamentarian through a three-fourths majority vote of the full plenary of the relevant legislative chamber. This provision is found in the last sentence of Article 80 of the Constitution, which states that “*in any case, the detention or prosecution of a Member of the National Assembly shall be suspended if the National Assembly requires that the detention or prosecution be suspended by a three quarter majority vote of all Members of the National Assembly,*” as well as in Article 104 in the case of Senate Members. Article 13 of the LSNAM and of the LSSM provide for the same procedure.

Although authorities have argued – such as in the case of Um Sam An – that this provision is meant to be read along with the previous sentence in Article 80 of the Constitution regarding cases committed “*in flagrante delicto,*” it is clear that it is meant to address any and all cases of judicial actions being taken against parliamentarians. This is reinforced by the fact that it is included as a stand-alone provision in both the LSNAM and the LSSM that does not mention “*in flagrante delicto*” but rather “*in all cases above.*”

Additional Provisions

Articles 14, 15, and 16 of the LSNAM and LSSM provide additional provisions regarding parliamentary immunity and the prosecution of parliamentarians.

Article 14

The National Assembly member/Senator whose immunity has been removed and is being prosecuted in the courts shall have rights and privileges like those of the National Assembly members/Senators in general.

The National Assembly member/Senator who is subject to temporary arrest or detention shall lose the right to attend the meetings of the National Assembly/Senate and other Commissions and is entitled to receive remuneration except for meeting fees, mission per diems or money for fuel.

The National Assembly member/Senator, upon final judgment or verdict rendered by the court as a convicted person with jail term, shall completely lose his/her rights, privileges and membership as a National Assembly member/Senator.

Article 15

Any National Assembly member/Senator, who has been convicted [of a crime] and is granted a pardon by the King, shall have his/her eligibility, immunity and privileges restored.

Article 16

Any National Assembly member/Senator, upon final judgment or verdict rendered by the court, who has been judged innocent, shall automatically have his/her full immunity and privileges restored.

Particularly problematic with the above articles is the lack of mention of procedures to follow if a parliamentarian is convicted but not given a custodial sentence. Moreover, confusion has arisen over the lack of clear instructions in these articles as to the process to follow to restore immunity, particularly in the case of a royal pardon as provided for in Article 15.

III. Conclusion

In a 2006 analysis of parliamentary immunity, the IPU argued:

“There is no doubt that a well-defined system of parliamentary immunities is absolutely necessary for the functioning of a parliament, without which parliaments would degenerate into polite and ineffective debating forums. It is clear that this protection is all the more necessary for parliaments operating in a difficult environment as is the case in transitional societies. But parliaments do not operate in a vacuum and are largely dependent on their political environment and its respect for democratic and human rights principles. It is therefore also clear that parliamentary immunity in itself is not sufficient to create the space of liberty and independence that parliaments require.”¹⁸

As highlighted in the above analysis, Cambodian legal provisions regarding parliamentary immunity are often vague and ill-defined, resulting in much confusion over the scope of parliamentary immunity – both absolute and relative – and the procedures that are to be undertaken by parliamentary bodies when responding to requests to lift immunity. This is particularly problematic given Cambodia’s judicial and political context, where cases against parliamentarians are often – if not always – politically motivated, and neither the judicial nor the legislative branches are able to act as checks on executive power.

In sum, there is an urgent need for legislative reform in Cambodia regarding parliamentary immunity to ensure that the legislation not only reflects the intents and purposes of parliamentary immunity in a general sense, but also that it protects parliamentarians from political persecution. As noted earlier, parliamentary immunity is an essential tool in providing a legislature with the independence and freedom to fulfill its core functions in a democracy. As such, the abuse of parliamentary immunity affects Parliament as an institution and threatens Cambodia’s fragile democratic space.

¹⁸ UNDP, *Parliamentary Immunity – Background Paper prepared by the Inter-Parliamentary Union* (September 2006), available at: <http://www.agora-parl.org/sites/default/files/UNDP-IPU%20-%20Parliamentary%20Immunity%20-%202006%20-%20EN%20-%20Parliamentary%20Institution.pdf>.



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