

At his best, man is the noblest of all animals; separated from law and justice, he is the worst. - **Aristotle**

There is no greater tyranny than that which is perpetrated under the shield of law and in the name of justice. - **Montesquieu**

Law and order exist for the purpose of establishing justice and when they fail in this purpose they become the dangerously structured dams that block of the flow of social progress. - **Martin Luther King, JR.**

**Article 80:** Members of the National Assembly shall enjoy parliamentary immunity. No Member of the National Assembly shall be prosecuted, detained or arrested because of opinions expressed in the exercise of his/her duties. 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 case of flagrant delicto offences<sup>1</sup>. 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 by a two thirds majority vote of all Members of the National Assembly. 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.

Delightfully, I am asked to help interpret the ongoing interpretations of Cambodia Constitution while a Cambodian powerful autocrat has continued to throw in jail Cambodian members of parliament without respecting “immunity” those law-makers are guaranteed by the Cambodia Constitution. Recently, Um Sam An, member of parliament from opposition Cambodia National Rescue Party (CNRP) was handcuffed and incarcerated while his parliamentary immunity was not yet lifted. This action happened about six months after Hong Sok Hour, a member of Senate, was handcuffed and incarcerated while his parliamentary immunity was not yet lifted as well. Article 80 of the Constitution is a key charter to this central debate.

First, as historically recorded, law violator has been active during these three decades. Cambodian Constitution with many chapters inscribed and amended since 1993 have not been properly complying with or implementing them. Since adoption and enforcing into action in September 24, 1993, Cambodia Constitution is containing a separation of powers (Article 51), adherence to international human rights treaties (Article 31) and a series of provisions respecting basic civil rights (Articles 32 to 50), all have been well written in paper but not in its due processes<sup>2</sup>. Other provisions such as National

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- 1 According to online Wikipedia, ***In flagrante delicto*** or sometimes simply ***in flagrante*** is a legal term used to indicate that a criminal has been caught in the act of committing an offence. The colloquial "caught in the act" or "caught red-handed" are English equivalents. The phrase combines the present active participle *flagrāns* with the noun *dēlictum*. In this term the Latin preposition *in*, not indicating motion, takes the ablative. The closest literal translation would be "in blazing offence", where "blazing" is a metaphor for vigorous, highly visible action. Aside from the legal meaning, the Latin term is often used colloquially as a euphemism for someone's being caught in the midst of sexual activity.
  - 2 According to online Wikipedia, **Due process** is the legal requirement that the state must respect all legal rights that are owed to a person. Due process balances the power of law of the land and protects the individual person from it. When a government harms a person without following the exact course of the law, this constitutes a due process violation, which offends the rule of law.

Congress and Supreme Council of Defence headed by the King have not taken shape under the leadership of CPP.

Second, Constitutional Council Members who are directly involving with interpretation, creation, monitoring, and constitutionality of the rule of laws are visibly dominated by the loyalists of the government-led party CPP. Many events, the Council has no action plan and activities to handle with all constitutional conflicts or independently investigate any power abuses perpetrated by the powerful. Whenever constitutionality is at controversy, this body is lacking due diligence<sup>3</sup> and professionalism to solve problems.

Third, justice system in Cambodia is at the brink of annihilation. Counting from the ministry of justice to private office of legal expertise, they are losing sight of upholding professionalism<sup>4</sup>. Judges and those legal expertise are impregnably politicized. Recent public announcement of investigator towards a female scheme is not in due processes. The statements from government entities such as ministry of justice, ministry of women affairs, and committee for protection of woman rights, coincidentally issued a statement concerning the open letter of Srey Mom to condemn some involved NGOs. The statements surely undermined the due processes of the law and bypassing the “Presumption of Innocence”<sup>5</sup> on the accused before a thorough investigation is conducted.

Fourth, overall undermining of Cambodia Constitution is the partial armed forces of this nation including the attempt to teaming up of government-led party CPP loyalists among those armed forces. The Commander in Chief of the Royal Cambodian Armed Forces, Gen. Pol Saroeun, the Chief of National Police, Gen. Neth Savoeun, and two other military commanders, Gen. Meas Sophea and Gen. Khun Kim, are the members of the politburo of the ruling CPP.

In conclusion, the different interpretations of the Constitution on chapter 80 on law-makers' immunity are just one of the political tactics a tactician invented to stir up the bonding of society and gaining allegiance among those suspicious loyalists. A dictator has always been in fearful situation when he sees any outstanding bonding emerged; so before it is too late, he must ensure that the strength is not overwhelmed for him to control. For instance, the strength happening among tech-savvy youths shall be used the same tech-savvy youths to divide such strength. The control of national wealth and the need to liberalize economic development is a need for the survival of the loyalists, but the rule of laws shall be relentlessly abused to ensure “divide and conquer” tactic is remained intact. **For Cambodia at the moment, the country is like a nice tree with no root because of the relentless twists on the rule of laws and the constitution.**

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3 According Merriam-Webster Dictionary, due diligence is the care that a reasonable person exercises to avoid harm to other persons or their property.

4 According to Merriam-Webster Dictionary, professionalism is the skill, good judgment, and polite behavior that is expected from a person who is trained to do a job well.

5 According to Merriam-Webster Dictionary, “Presumption of Innocence” is a rebuttable presumption in the favor of the defendant in a criminal action imposing on the prosecution the burden of proving guilt beyond a reasonable doubt.