

*Role of the Lawmakers*¹⁶



A) Two Major Principles:

Article 77 CC stipulates that members of the NA are

- the **representatives of the Cambodian people as a whole** and
- are **not bound** by any instructions or directives and are **only subject to their consciences** which is their conviction of what serves the nation the most.

Article 77 CC:

The deputies in the National Assembly shall represent the **entire Khmer people**, not only Khmers from their constituencies.

Any imperative mandate shall be nullified.

This – so called – “**free mandate**”, which stands in contrast to a – so called – imperative mandate, prohibits a voter or the party or its organs giving legally binding instruction to a deputy. The principle of the free mandate is the most important embodiment of the principle of the representative democracy (Article 51 CC) in the Cambodian Constitution.

¹⁶ The used expression “lawmaker” refers to deputies of the National Assembly as well of the Senate



The constitution wants the deputies to be free despite their membership in a political party. This freedom allows the parties only to **request, recommend or expect** a deputy to express his/her opinion or to vote in a specific way, but **not to oblige or compel** him or her to follow a particular party line.

The principle of the free mandate comprises also the **keeping of the mandate as a deputy in case of leaving or changing the party or being expelled from it**. The seat in the NA does not belong to the party but to the elected lawmaker! Bad behavior of a deputy can however have negative results at the next election if voters are not happy with the party that presents them this kind of weak candidate again.

Example for a completely unconstitutional incident¹⁷:

In December 2001 three members of the Senate (Chhang Song, Siphon Phay and Pou Savath) were **expelled** from their party, the CPP, because they were not following the party line but criticizing the Draft of the Criminal Code. The President of the Senate, Chea Sim, **dismissed** the three deputies **from the Senate** without any notification or procedure and explained his decision as follows: "...Our practices and laws provide for the loss of seat in the Senate in case a member is fired by his/her party. ... Our election follows the proportional system in which the people vote for parties, not individuals. That is why the position held by the individual member is linked to his/her party membership. ..."

A quick look into the Constitution or the Internal Rules of the Senate assures that there is no such regulation. A simple "practice" cannot contravene the constitutional principle of the free mandate. The dismissal was a clear breach of the constitution and of the principle of the representative democracy¹⁸.

B) Rights of the lawmakers in detail:

The deputy's foremost duty – besides making laws (Art. 90 I and Art. 91 CC) – is to **control the activities of the government**. To secure that the government's activities are not outside the law and in the people's interest every deputy has the following rights:

I) The right to unite and form PARLIAMENTARIAN GROUPS (fractions) means to exercise the human right of association (Article 42 I CC and Article 22 Nr. 1 ICCPR) and to become stronger and more persuasive together with other like-minded deputies in taking decisions such as:

- function of control
- inviting a member of the government to appear before the Assembly to answer questions, Articles 89 and 97 CC and Principles 32 – 34 of the NA Internal Regulations
 - putting a motion against the government, Article 96 I 1 CC
 - dismissing a member of the government, Article 98 CC and Principle 35 of the NA Internal Regulations
 - filing charges against a member of the government in case of serious offenses committed by this member, Article 126 II and III CC.

¹⁷ For more details on the role of the lawmakers see the webpage of the "Inter-Parliamentary Union" (IPU) which defends human rights of deputies all over the world: www.ipu.org

¹⁸ The "Inter-Parliamentary Union" (IPU) clearly stated this in an unanimous resolution of September 27, 2002 condemning the decision of the Cambodian Senate's President – see also www.ipu.org/hr-e/171/Cmbd18.htm



II) The rights to DEBATE and DISCUSS openly and **express opinions** without fear and in a structured and coordinated manner so that every representative can equally contribute his/her concerns, experiences and expertise (Principle 36 of the NA Internal Regulations).

This participation is exercised either

- by raising hands (Principle 37 of the NA Internal Regulations) or voting **openly** (Principle 39 of the NA Internal Regulations) or
- by voting in a **secret** way (Articles 38 – 40 of the NA Internal Regulations)

Voting **by name** should remain the **exception** to reduce the risk of outside influence on the deputy’s voting behavior. Secret voting should not only be used in the cases mentioned in Principle 40 of the NA Internal Regulations (appointments and expression of confidence, etc.), **secret voting should be the rule.**



III) The right to enjoy IMMUNITY (Articles 80 and 104 CC):

Article 80 CC:

The deputies shall enjoy **parliamentary immunity.**

No assembly member shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his (her) duties.

The accusation, arrest, or detention of an assembly member shall be made **only with the permission of the National Assembly** or by the Standing Committee of the National Assembly between sessions, except in case of *flagrante delicto*. In that case, the competent authority shall immediately report to the National Assembly or to the Standing Committee for decision.

The decision made by the Standing Committee of the National Assembly shall be submitted to the National Assembly at its next session **for approval by a 2/3 majority vote of the assembly members.**

In any case, detention or prosecution of a deputy shall be suspended by a 3/4 majority vote of the National Assembly members.

Playing the role of an effective “watchdog” monitoring the government deputies sometimes make statements which are accusing government officers in an unsubstantiated way of misconduct or which are just impatient and impolite requests for an explanation from the government. Under certain circumstances some statements



might be considered as defamations which are both a civil and a criminal offense. Without an exemption from punishment deputies would always run the risk of a defamation charge and would choose rather not to speak for fear of punishment by the courts.

To avoid this parliamentary immunity protects them from being charged thus encouraging them to speak freely and without fear. This ensures lively debates and an effective exercise of the control function of the NA.

Immunity means deputies can only be held responsible for a criminal act if there is a 2/3 consent of the Assembly. When the Assembly is called to decide upon an application of the prosecution or of the court the Assembly it is not allowed to examine the evidence whether a crime (for example a defamation) has been committed or not – this is the duty of the judiciary body only! The Assembly only can balance the undisturbed function of the parliament on one side and the interests of the judicial power in punishing law violations on the other side. It only has to answer the following question: What is more important in that particular case: to maintain the functioning of the parliament or to enable the prosecution of a (serious) offense? The answer depends on the seriousness of the law violation.

The principle of immunity protects the operation and function of the NA and guarantees the possibility of an open and free discussion in parliament. In a vivid democracy a lively debate among the lawmakers is crucial. Debate and discussion would come to a standstill if lawmakers have to apologize after every verbal attack they launch or always have to be afraid of legal consequences before they comment on something.

Instead of a criminal punishment a possible other sanction for abusive language may be a request of the Chair of the Assembly to return to the parliamentary order (Article 62 of the NA Internal Regulations).

IV) The right to be a MEMBER OF A COMMISSION (Articles 82 I and 94 I CC in connection with Principle 6 of the NA Internal Regulations) where the deputy can bring in his/her special expertise.

Every deputy should be **member in at least one commission** so the expertise of all deputies can be used for the parliamentary decision making process. There are no provisions in the NA Internal Regulations whether or not the sessions of the **commissions** should be held in public, but Article 88 I CC shows that **in principle** all sessions of the Assembly should be public. This principle should also be applied to sessions of the **commissions** to ensure the legitimacy of the legislative process.

V) The right to get the SAME SALARY as the government officers who the lawmaker is supposed to control (Article 81 II CC in connection with Principle 4 of the NA Internal Regulations). This symbolizes that the legislative power has the same significance as the executive power.



VI) Proposals to STRENGTHEN the Cambodian lawmakers:

To improve the operation and function of the parliament the Cambodian deputies might take into consideration the following **proposals** which reflect the parliamentary standards of many well-functioning democracies in the world:

- 1) Deputies should have an explicit **right to have access to all sorts of records and documents** of the Assembly, its bodies and as well of the government. This is necessary to provide the deputies with a solid basis of information they can build their decision on. Without proper information no intelligent decisions in the interest of the Cambodian people can be made!
- 2) Deputies should enjoy **protection from being dismissed by their employers**. Their job position should be kept vacant until they have finished their mandate.
- 3) Deputies should enjoy the right not to be forced to breach the confidence and to disclose the identity of citizen who gave them politically interesting information (for example details of logging activities). Deputies should be entitled to protect their source of information and should be given the **right to refuse to testify** before the court or any authority about the names of citizen from whom they got the information.
- 4) Deputies should be entitled to call for **fact-finding committees**. These are special investigation commissions established to reveal cases of any sort of power abuse in the government and the administration. They can be installed whenever a case of power abuse becomes public. They serve as control organs as well as sources of information for the parliament. They normally have investigative power as strong as prosecutors or judges.
- 5) Deputies should be given the right to establish a **commission of inquiry** that prepares parliamentary decisions about complex and significant matters, for example decisions concerning the Mekong river like dam projects or the founding of commercial complexes in protected areas.
- 6) As **Article 96 VI 1 CC** provides it already, deputies should use more often the possibility to address questions to the government **whenever urgent matters of public interest** arise, for example signing new border contracts with neighboring countries.

C) Duties of the Lawmakers:

The deputies not only enjoy rights but also have duties to guarantee a responsible and reliable representation of the Cambodian people.

The operation and function of the NA for example can be undermined when the deputies just do not appear at the parliamentary sessions. This kind of blocking the decision making process was frequently used in the recent past to prevent the NA from



reaching the necessary **quorum of 7/10 present deputies** to decide on a law (Article 88 II CC) .

To avoid this and other obstructions of a smooth parliamentary proceeding every deputy has the following duties:

I) The duty to regularly attend the sessions of the NA or its commissions (Principles 67 and 13 of the NA Internal Regulations).

Every deputy only is entitled to a **leave of 15 days each session** (Principle 68 of the NA Internal Regulations).

But if s/he fails to attend the sessions **without reasonable cause** (for example: sickness proved by a medical prescription) the following discipline sanctions can be imposed (Principle 72 of the NA Internal Regulations):

- **warning** for a 2-days absence
- **cutting of allowances** respectively to the number of absent days
- **dismissal from the sessions for 15 days**
- **cutting off allowances, dismissal from sessions for one month and announcement to his/her constituency.**

To decide what is and what is not a reasonable cause has to be decided by the Permanent Committee of the NA and not by a single person (Article 72 III of the NA Internal Regulations)!

II) The duty to respect the given time of 20 minutes to speak

during sessions (Principle 59 of the NA Internal Regulations).

This strict speaking limit ensures that every deputy enjoys the same attention no matter if s/he is belongs to the ruling or the opposition party.



III) The duty not to hold any active public function and not to be a member of any institution provided for in the Constitution (except of serving in the Royal Government, Article 79 I CC) and **at the same time holding any position in the Permanent Standing Committee or a Commission (INCOMPATIBILITY).**

To improve the transparency and accountability of the decision making process in the NA deputies should **publish their profession, position and income, their commercial and other activities which can influence their parliamentary work** (for example: member of trade companies, directors of a garment factories, owners of a casinos etc.) as well as the amount of donations they get and – of course – the names of the donors.

Role of the Lawmakers

Two major principles, Article 77 CC:

- Lawmakers represent the Cambodian people as a whole and
- are not bound by any instructions or directives but only by their own conscience

Rights

- to unite and form parliamentary groups
- to debate and discuss and express opinions
- to enjoy immunity
- to be a member of a commission
- to get the same salary as the government officials

Duties

- to regularly attend the sessions of the Assembly
- to respect the given speaking time
- not to hold a public function or a post in an institution (provided by the Constitution) and be a member of the Permanent Standing Committee or a Commission of the Assembly at the same time (incompatibility)



Study Question 7

After the anti-Thai riots on January 29, 2003 the Chairwoman of the Foreign Affairs Commission of the National Assembly, Princess Vacheara, asked Prime Minister Hun Sen to appear before the National Assembly to testify about the incidents.

a) Is this possible according to the Constitution?

Do not just answer with “yes” or “no” but also quote the relevant article(s)!

b) What other possibilities could she have chosen instead of inviting the Prime Minister to appear before the National Assembly?

c) Why do you think the Princess asked the Prime Minister to appear before the National Assembly and not the Minister of Foreign Affairs or any other minister?



Study Question 8

Parliament member Princess Vacheara said in a press conference at the National Assembly that she was informed that during a meeting of the government cabinet the Prime Minister Hun Sen said that he will only address her by the title “neang” or “luk chum teav” in future time and that he will put her to Prey Sar prison with a “herd” of other people.

Prime Minister Hun Sen denied the accusations and said that the Princess’ comments are intentionally defamatory and that he will prepare a defamation lawsuit against her.

Can Prime Minister Hun Sen sue the Princess?

Do not just answer with “yes” or “no” but give reasons for your opinion and quote the relevant articles!



Study Question 9

Read the summary of Cambodian Daily’s article of August 16, 2002!

All 15 Sam Rainsy Party Members of Parliament and at least 15 Funcinpec Members of Parliament who had boycotted the National Assembly session returned to their work thus making it possible for the Assembly to reach the necessary quorum and pass the Social Security Law. These lawmakers had stayed away for four days from the assembly because they wanted to send a signal to the CPP lawmakers. They claimed that these CPP lawmakers had boycotted the nomination of the Co-Minister of Interior, Khan Savouen, by massive abstentions from the parliament thus preventing him from getting the necessary 2/3 support from the assembly.

One article of the Cambodian Constitution states that a meeting of the National Assembly is only valid when a certain minimum number of members of the National Assembly attend it.

Please quote this Article precisely **and** say how many assembly members must be present.



Study Question 10

An assembly member can be absent from the meeting of the National Assembly only for a limited number of different reasons.

Please list **all** of these different reasons and quote the respective Principles of the Internal Rules of the National Assembly.



Study Question 11

Please list the different punishments for the illegal absence of a member of parliament.

Start the list with the softest punishment and end with the strongest punishment ("principle of proportionality")

Do not forget to quote the relevant principles of the Internal Rules of the National Assembly!



Study Question 12

The political parties represented in the National Assembly enjoy the freedom of association.

a) Please cite international and national legal provisions (article numbers) which protect the freedom of association.

b) What is the difference between the freedom of assembly and the freedom of association?

c) What are the restrictions on the freedom of association? Quote the relevant national and international articles!