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Cambodian Center for Human Rights

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Efforts to Seek Suspension of Judges for Alleged Procedural Failings Obscures Flaws in the Law

Yesterday, 4 January 2012, it was reported in *The Cambodia Daily* (“Punish Judges in Case of Hun Sen’s Cousin, Lawyer Says”) that a lawyer, Mr Kao Ty, had filed a complaint with the Supreme Council of the Magistracy (the “SCM”) accusing three judges of bias and calling for the SCM to either transfer the judges from their workplace or suspend them from duty if misconduct on their part is found to have occurred. Mr Kao states that the judges had abused the Code of Criminal Procedure 2007 (the “Code”) and violated the laws of the Cambodian Bar Association.

According to *The Cambodia Daily*, on 28 November 2011, a panel of judges – Duch Kimsan, Te Sam Ang and Seng Neang – found Dy Proem, a cousin of Prime Minister Hun Sen, and Seng Yean, deputy director-general of inspection at the Ministry of National Assembly-Senate Relations, guilty of corruption in a land dispute in Dangkao district, Phnom Penh, and sentenced them – *in absentia* – to two and a half years’ and four and a half years’ imprisonment, respectively. However, the judges have failed to issue arrest warrants for Dy Proem and Seng Yean, who remain free to this day.

However, under Article 353 of the [Code](#), courts actually have discretion, based on a special reasoned decision, as to whether to issue an arrest warrant against an accused who is absent from proceedings in instances when they are sentenced to at least one year’s imprisonment without suspension, and there are no directives or guidelines relating to the interpretation of this provision. While judicial discretion is not in principle an issue of concern, it does become deeply problematic if the judicial system is not fully independent and frequently falls prey to political influence.

The provision represents a loophole in the law, as illustrated by the case in question, through which those with power and influence can remain at liberty, free from imprisonment even after conviction. The results are injustice, whereby the interests of those harmed are not considered, and impunity, with no deterrent to potential law-breakers. Furthermore, it fosters the continuation of a culture of corruption endemic in Cambodian society: those with enough money can pay for their freedom. This provision should be reviewed and amended to ensure that this loophole is closed.

Monika Mang, Senior Trial Monitor, says:

“This case is just one of many illustrating the level of impunity afforded to the influential and powerful in Cambodia. Even where these individuals are found guilty of an offense by a court of law and sentenced to imprisonment, they are allowed to continue with their lives, as though they have been acquitted. This culture of impunity is aided by a judicial system that is not independent and subject to political influence. However, in this case, a flaw in the drafting of the law has allowed the judges unnecessary discretion and enabled them to play it safe, serving political interests while still abiding by the law. The law should be amended so that in future arrest warrants have to be issued.”

For more information, please contact Senior Trial Monitor, Monika Mang, via telephone at +855 16 92 72 79 or email at monika.mang@cchrcambodia.org.