



INTER-PARLIAMENTARY UNION

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CONFIDENTIAL

COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS

CASE No. CMBD/01 - SAM RAINSY - CAMBODIA

*Confidential decision adopted by the Committee at its 128th session
(Geneva, 18 - 21 January 2010)*

The Committee,

Referring to the outline of the case of Mr. Sam Rainsy, leader of the opposition in the National Assembly of Cambodia, as contained in its report,

The evidence currently on file is as follows:

- According to the source, Mr. Sam Rainsy had received complaints from villagers in Svay Rieng province that they were losing their rice fields owing to Vietnamese border encroachments; the complaints which the farmers lodged with the local authorities in this respect having remained unavailing, they turned to their elected representative; on 25 October 2009, during a Kathen ceremony, Mr. Sam Rainsy uprooted six temporary wooden posts planted in a rice field which belonged to a farmer, who had inherited the land from her father; the matter provoked strong criticism by the Vietnamese authorities, and the Prime Minister reportedly invited the Cambodian Government to take "due measures" regarding Sam Rainsy's "acts of sabotage";
- According to the Speaker of the National Assembly, the demarcation posts had been agreed upon by the Cambodia-Viet Nam Border Committee and Mr. Sam Rainsy had used inflammatory remarks; he stressed that uprooting border demarcation posts is considered a violation of government affairs and a destruction of State property, which is an offence under the United Nations Transitional Authority in Cambodia - UNTAC law;
- According to the Speaker, on 28 October 2009, the Prosecutor of Svay Rieng Provincial Court submitted a request to the Minister of Justice to have Mr. Sam Rainsy's parliamentary immunity lifted; the Minister forwarded the request the same day to the Speaker of the National Assembly, seeking the lifting of Mr. Sam Rainsy's immunity in order to prosecute him on charges of uprooting border demarcation posts and for inciting people to commit "unsuccessful crimes" and misdemeanour offences; on 12 November 2009, the Permanent Committee decided to submit the matter to the plenary for "consideration and adoption" of the request for the lifting of his immunity; the same day, 64 parliamentarians requested a closed-door session for this purpose and on 16 November, the Speaker requested the Assembly to adopt the decision on the lifting of immunity by a show of hands; the parliamentarians belonging to the opposition boycotted the session and the majority parliamentarians all voted in favour (87/87 votes);
- According to the source, at a press conference held on 16 November 2009, the government adviser in charge of border affairs, Mr. Var Kim Hong, reportedly stated that the border posts were temporary border markings and that they were in villagers' land; according to information provided by the Sam Rainsy Party (SRP), the remaining

temporary demarcation posts were removed by the Vietnamese authorities in late December 2009/early January 2010;

- According to Mr. Sam Rainsy, the existing documents regarding the border in the region clearly show that the wooden poles were posted on Cambodian territory, the border being far away from where the poles were planted; a visit, on 14 December 2009 by an SRP parliamentary delegation and independent observers to the Svay Rieng border reportedly also provided evidence of many Cambodian farmers having lost their rice fields because of border encroachments; Mr. Sam Rainsy is therefore of the view that the villagers in question are legal owners of their rice fields and that the temporary demarcation posts were planted in their lands without their consent;
- Under the UNTAC penal code, damaging property can carry a prison sentence of one to three years, or under a year if the damage is minor; incitement to discrimination carries a prison term of one month to one year, a fine or both;
- Mr. Sam Rainsy's trial has been set for 27 January 2010; in early January 2010, an arrest warrant was issued for him as he failed to appear for a court summons on 28 December 2009; he is currently abroad; on 5 January 2010, Prime Minister Hun Sen reportedly warned that he would not request a pardon for Mr. Sam Rainsy should he be found guilty; "after the court convicts, let it be", he was quoted as saying in an article published on 6 January 2010 in the Phnom Penh Post,

Recalling that Mr. Sam Rainsy's immunity had been lifted in February 2009 to enable prosecution against him for allegedly insulting the Cambodian People's Party during the 2008 elections; that he paid the fine that had been imposed on him; that however, it took some time before his parliamentary immunity was restored,

Bearing in mind that Cambodia, as a party to the International Covenant on Civil and Political Rights, which guarantees freedom of expression and the right to a fair trial, is bound to respect those rights and to take into account the interpretation given to those rights by the relevant international human rights bodies,

1. *Thanks* the Speaker of the National Assembly for the information he provided;
2. *Is deeply concerned* at the lifting of Mr. Sam Rainsy's parliamentary immunity for the same reasons as the ones it has expressed in the cases of opposition parliamentarians Ho Vann and Mo Sochua, namely that without proper examination of the request for the lifting of immunity, without an open and public parliamentary debate, during which the parliamentarians concerned can present their arguments without a secret vote, parliamentary immunity is reduced to a mere formality and is thus meaningless;
3. *Notes with particular concern* that this is the second time that the opposition leader had his immunity lifted in 2009;
4. *Expresses further concern* at the charges laid against Mr. Sam Rainsy which, in the light of the information before it, appear highly questionable; and *wishes* to receive a copy of the indictment and to be kept informed of the outcome of the trial hearing of 27 January 2010;
5. *Decides* to continue examining this case at its next session, to be held during the 122nd IPU Assembly (March-April 2010), when it will decide whether or not it is appropriate to bring this case to the attention of the Governing Council in a public report;
6. *Requests* the Secretary General to inform the Speaker of the National Assembly accordingly, expressing its wish to meet with the Cambodian delegation to the 122nd Assembly.



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The Committee,

Having before its communications concerning Mr. Sam Rainsy, a member of the National Assembly of Cambodia,

1. *Notes* that the communication was submitted in due form;
2. *Notes* that the communication was submitted by the parliamentarian concerned, a source qualified under Section C(a) of the Committee's Procedure for the treatment by the Inter-Parliamentary Union of communications concerning violations of the human rights of members of parliament;
3. *Notes* that the communication concerns the arbitrary lifting of parliamentary immunity and criminal proceedings, which may be politically motivated. The communication appears therefore prima facie to be admissible under the terms of the Committee's procedure.
4. *Concludes* that all criteria for admissibility have been met; and *declares itself* competent to examine the complaint.