



INTER-PARLIAMENTARY UNION

CHEMIN DU POMMIER 5
1218 LE GRAND-SACONNEX / GENEVA (SWITZERLAND)

TELEPHONE + 41 22 - 919 41 50 - FAX + 41 22 - 919 41 60 - E-MAIL postbox@mail.ipu.org

CASE No. CMBD/01 - SAM RAINSY - CAMBODIA

Resolution adopted unanimously by the IPU Governing Council at its 187th session* (Geneva, 6 October 2010)

The Governing Council of the Inter-Parliamentary Union,

Having before it the case of Mr. Sam Rainsy, which has been the subject of a study and report of the Committee on the Human Rights of Parliamentarians following the Procedure for the treatment by the Inter-Parliamentary Union of communications concerning violations of the human rights of members of parliament,

Taking note of the report of the Committee on the Human Rights of Parliamentarians, which contains a detailed outline of the case (CL/187/12(b)-R.1),

Considering the following information on file regarding the facts and legal proceedings to which they gave rise:

- On 25 October 2009, during a Buddhist Kathen celebration in Svay Rieng province, opposition leader Mr. Sam Rainsy led local villagers and officials of his party in uprooting six wooden temporary posts (border post #185) marking the country's border with Viet Nam, which has been in a demarcation process for some time; villagers said that the Vietnamese had illegally shifted the posts onto Cambodian soil in their rice fields and that their complaints to the local authorities in this respect had remained unavailing; according to the source, the uprooting of the demarcation posts provoked strong criticism by the Vietnamese authorities, which invited the Cambodian Government to take "due measures" regarding Mr. Sam Rainsy's "acts of sabotage";
- The President of the National Assembly observed that the demarcation posts had been agreed upon by the Cambodia-Viet Nam Border Committee and that Mr. Sam Rainsy had also used inflammatory language to incite the crowd; he stressed, moreover, that the uprooting of border demarcation posts was considered a violation of government affairs and a destruction of State property, the latter being an offence under the United Nations Transitional Authority in Cambodia - UNTAC law;
- On 16 November 2009, the National Assembly, in a closed session boycotted by opposition members of parliament, stripped Mr. Sam Rainsy of his immunity by a show of hands; according to the President of the National Assembly, on 12 November the Assembly's Permanent Committee had recommended that Mr. Sam Rainsy's immunity be lifted and, on 13 November, 64 parliamentarians had sent him a letter requesting a closed-door session; Mr. Sam Rainsy's immunity had therefore been lifted in conformity with existing law;
- On 27 January 2010, Svay Rieng provincial court found Mr. Sam Rainsy guilty of wilfully damaging public property in connection with the uprooting of border posts and of incitement to racial hatred [Articles 52 and 61 of the UNTAC (United Nations Transitional Authority in Cambodia) penal law, respectively] and sentenced him to two years in prison; in addition, it sentenced two local villagers, Ms. Meas Srey and Mr. Prum Chea, to one year in prison for damage to property; all three were further ordered to pay heavy fines and damages ranging from 5 to 50 million riels; an appeal against the sentence was set for hearing on 5 October;

* The delegation of Cambodia expressed its reservation regarding the resolution.

- In a public statement on the trial, the regional office of the United Nations High Commissioner for Human Rights (OHCHR) observed that the media were debarred from the courtroom although space was available, on several occasions the President of the Court did not interrupt the civil party lawyer who verbally attacked the accused and their lawyers aggressively and recalls that due process and international standards provide that trials should be public and respect the principle of equality of arms; other sources reported that the court had refused to consider defence evidence;
- Following that verdict, Mr. Sam Rainsy gathered evidence, including an independent expertise, to prove that the temporary border demarcation posts were indeed on Cambodian territory; as a result, on 12 March 2010, a new charge of falsification of public documents and divulging false information was brought against him; on 23 September 2010, Phnom Penh Municipal Court found him guilty and sentenced him to 10 years' imprisonment and a heavy fine and damages on account of having, according to the court, published a map showing a false border with Viet Nam; if upheld on appeal, that verdict will bar Mr. Sam Rainsy from standing in the 2013 elections by virtue of Article 34(2) of the Law on the Election of Members of the National Assembly, which stipulates that persons who are sentenced to imprisonment for a felony or misdemeanour by the courts and who have not been rehabilitated are not eligible to stand as candidates for election to the National Assembly,

Considering that Prime Minister Hun Sen was quoted by Cambodian media as having stated during an inauguration ceremony for a stretch of National Road 1 in Kandal province on 6 January 2010: "This time, I would like to declare ... there is no (pardon); after the court convicts, let it be"; that on 20 September 2010 he reportedly stated that there was no room for negotiation: "If you don't come to jail, the prison will go to take you", he was quoted as saying in newspaper reports,

Noting with regard to the disputed border demarcation posts the following:

- Mr. Sam Rainsy has based his conclusion regarding border delineation in the municipality in question on the French SGI 1/100,000 Map that has been deposited at the United Nations since 1964; there is reportedly not as yet a map officially recognized by both Cambodia and Viet Nam since the demarcation process is still under way; according to the source, in a statement broadcast by Radio Free Asia, government representative and Border Committee chief Var Kim Hong admitted that the maps used by Mr. Sam Rainsy were the correct maps;
- According to the Sam Rainsy Party (SRP), the border demarcation posts which remained in the municipality were removed by the Vietnamese authorities in late December 2009/early January 2010 and none of those posts have been put back in place;
- While the authorities claim that Mr. Sam Rainsy's determination of the location of the temporary border posts is false, they have refused to reveal the official data on the grounds that they constitute a State secret;
- According to information supplied by the source in April 2010, the Government had recognized that the temporary border post #185, consisting of six wooden poles which Mr. Sam Rainsy pulled out, was not a real and legal border marker and decided officially to dismantle those border posts; furthermore, officials from the Council of Ministers reportedly specified in official documents submitted to the Court that the disputed temporary border posts were actually located at a distance of approximately 516 metres from the real and legal borderline,

Considering that, in commenting on the issues at stake at the Committee's 129th session (April 2010), the leader of the Cambodian delegation to the 122nd IPU Assembly observed inter alia that, while parliamentarians were entitled to protect the interests of their country, they had a duty to do so by legal means, and that, instead of uprooting border posts, Mr. Sam Rainsy should have raised the issue in parliament; *considering* in this regard that, according to the SRP, opposition members have since tried to raise such issues on various occasions in parliament, but were prevented from doing so and that they were also prevented from meeting with farmers complaining about land grabbing, mentioning in this respect an incident of June 2010 when the President of the National Assembly allegedly forbade the opposition in writing to visit constituents in Takeo province, where local authorities stopped their travel to the area concerned; that a proposal to form an independent

parliamentary committee made up of representatives of all political parties in order to report on the border issue and to investigate related tensions or incidents, was also refused,

Observing that Mr. Sam Rainsy, who is at present living in exile in France, has been facing problems ever since he created his political party, the SRP, in 1995; that a particularly grave incident occurred on 20 March 1997 when, during a political rally, he was the target of a grenade attack in which Prime Minister Hun Sen's bodyguard unit has been implicated, which killed 16 people and wounded 150; that in December 2005, while he was abroad, he was sentenced to 18 months' imprisonment and was able to return after Hun Sen agreed to a royal pardon in February 2006; that, more recently, Mr. Sam Rainsy's immunity was lifted in February 2009 to permit prosecution against him for allegedly insulting the Cambodian People's Party during the 2008 elections; that, moreover, several defamation lawsuits are still pending against him,

Bearing in mind lastly, that several United Nations human rights bodies and mechanisms have expressed concern at the independence of the judiciary in Cambodia and "noted with concern the ... lack of judicial independence and effectiveness" as well as the judiciary's inability to "effectively restrain executive power"¹; most recently the United Nations Special Rapporteur on the situation of human rights in Cambodia, who has made a series of recommendations to enhance the independence of the judiciary,² and that the Cambodian authorities have favourably received his recommendations,

1. *Thanks* the parliamentary authorities for their cooperation with the Committee;
2. *Is alarmed* at the prosecution and sentencing to a 12-year prison term of Mr. Sam Rainsy, the opposition leader, on account of a gesture which it considers to be of a symbolic and clearly political nature, and consequently never should have been brought before a court but resolved at the political level; *considers*, moreover, that the sentence is wholly out of proportion;
3. *Is particularly alarmed* that, if upheld, this verdict would bar Mr. Sam Rainsy from standing in the 2013 parliamentary elections and have consequences far beyond Mr. Sam Rainsy's case as it is bound to affect the opposition as such, all the more so as the recent prosecutions of a number of outspoken opposition members have already narrowed down the political space, and hence be detrimental to the democratic process in Cambodia;
4. *Calls therefore* on the authorities to explore ways and means of resolving the issues at hand through political dialogue and to enable Mr. Sam Rainsy to resume his parliamentary activities as rapidly as possible;
5. *Observes* that the parliamentary authorities stated that Mr. Sam Rainsy should have raised the border issue within the National Assembly, thus implicitly recognizing the political nature of his act; *nevertheless notes* that, according to the Sam Rainsy Party, attempts to do so have since been unavailing and the parliamentary authorities reportedly rejected the opposition's proposal to set up a parliamentary committee to examine such matters;
6. *Notes with concern* the statements made by the Prime Minister about this case and its possible outcome, as they indicate that he expected a guilty verdict and Mr. Sam Rainsy's subsequent removal from politics in Cambodia; *observes* that this tends to corroborate the concerns voiced about the independence of the Cambodian judiciary and its exploitation for political purposes;
7. *Wonders*, particularly in the light of the independent expert analysis on the border issue in question, what kind of evidence the court adduced to prove the falsification of maps or divulgence of false information, all the more so as the Government reportedly itself conceded that the temporary borders markers were not on the legal borderline and

¹ A/HRC/WG.6/6/KHM/2.

² A/HRC/15/46.

officially decided to dismantle them; *wishes* therefore to receive a copy of both judgments given in this case;

8. *Is concerned* at the way in which the National Assembly lifted immunity in this case and *refers* in this context to the resolution it adopted in the case of Ms. Mu Sochua; *wishes to ascertain* why the National Assembly resorts to a procedure which can only cast doubt on its independence of the Government;
9. *Calls on* the Cambodian authorities to heed the recommendations made by the United Nations Special Rapporteur on the situation of human rights in Cambodia; *invites* the parliament of Cambodia to debate his report in parliament and to take the necessary measures to ensure implementation of his recommendations;
10. *Requests* the Secretary General to convey this resolution to the parliamentary authorities and to the sources and to other interested parties; *requests* him also to inform donor countries of its concerns in this case;
11. *Requests* the Committee to continue examining this case and report to it at its next session, to be held on the occasion of the 124th IPU Assembly (April 2011).