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Human Rights Now calls for an immediate stop to serious repressions against Cambodian opposition members

1. Introduction

Human Rights Now expresses deep concern about a recent series of repressions against opposition MPs, including Sam Rainsy, the leader of the opposition Cambodia National Rescue Party (CNRP), by the Phnom Penh Municipality Court. Although oppression against Cambodian opposition MPs has clearly escalated recently, the series of (repressive) parliamentary and judicial measures are highly suspected of lacking a legal basis. Thus, they should not be permitted as they violate freedom of expression and political activities guaranteed by the Universal Declaration of Human Rights, ICCPR, and Article 41 of the Cambodian Constitution.

2. The resolution on the removal of Kem Sokha as first vice president of the National Assembly

On October 30, the National Assembly adopted a resolution to remove Kem Sokha as first vice president of the National Assembly. The resolution passed unanimously by the ruling Cambodian People's Party (CPP), which occupied 68 seats of the 123-seat National Assembly, while all of the 55 members of the opposition party boycotted the vote. Regarding the result of this resolution, the ruling party claims that Kem Sokha became the vice president thanks to support from ruling party members who comprise a majority of the Assembly; thus, the ruling party has the right to remove him.¹ However, given that a legal basis for the dismissal of a vice president can only be found under Article 87 of the Cambodian Constitution, dismissals are (only) allowable in cases of resignation or death of the vice president. In this case, the resolution to remove the vice president lacks a constitutional basis, as Kem Sokha has neither resigned nor died.

3. Arrest warrant and two subpoenas issued against the opposition leader Sam Rainsy

On December 13, the Phnom Penh Municipality Court issued an arrest warrant against Sam Rainsy, the leader of the opposition party CNRP.² Seven years ago, Mr. Rainsy was charged with defamation against

¹ <https://www.cambodiadaily.com/news/kem-sokha-removed-as-assembly-vice-president-98833/>
<http://www.aljazeera.com/news/2015/10/cambodia-vote-revives-political-tensions-151030105126165.html>

² "Arrest warrant issued for Cambodian opposition leader Sam Rainsy" reported by BBC
<http://www.bbc.com/news/world-asia-34813566>

Foreign Minister Hor Namhong and incitement to discrimination on April 17, 2008. Then in 2011, he was sentenced by the Municipal Court to two years prison confinement as well as a fine of 8 million riel. On March 12, 2013, his sentences were confirmed when his appeal was rejected by the Appeals Court. However, the sentences have not been executed to date.³ Furthermore, according to information received by HRN, there are two other subpoenas issued against Mr. Rainsy on issues of freedom of expression.

On November 20, the Phnom Penh Municipality Court issued a subpoena against the CNRP leader Sam Rainsy requesting him to appear before the Court before December 4. It regarded the arrest of Senator Hong Sok Hour on August 12, who was a member of Sam Rainsy Party at the time and had been detained based on charges of forging an official document and incitement for posting a fake map on Sam Rainsy's SNS account. According to the subpoena, the Court will order authorities to forcefully take or arrest him if he fails to appear at the Court before the deadline.

Moreover, on December 1, 2015, the Phnom Penh Municipality Court issued a subpoena against Sam Rainsy requesting him to appear at an interrogation scheduled for January 4, 2017, regarding the accusation that Sam Rainsy defamed Heng Samrin, the President of the National Assembly on his SNS account.

4. National Assembly disqualification and deprivation of parliamentary immunity

In addition, according to press reports, the Cambodia National Assembly Standing Committee held a special meeting on November 16 and released a statement stating that "Sam Rainsy has lost his parliamentary privileges, his rights and membership as a lawmaker of the National Assembly."⁴

According to Article 120 [of the Law on Election of Members of the National Assembly (LEMNA) and Amendments of Law on Election of Members of the National Assembly], MPs are disqualified as lawmakers if they are convicted for "criminal or misdemeanor act". However, Mr. Rainsy was elected as a member of the National Assembly after the final decision by the Court and is continuing his activities as a MP in his new

"*Cambodia Poised to Arrest Opposition Leader; Violence Feared*" reported by AP
http://hosted.ap.org/dynamic/stories/A/AS_CAMBODIA_POLITICS?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT
"US raises alarm over Cambodia opposition crackdown" reported by AFP
http://news.yahoo.com/us-raises-alarm-over-cambodia-opposition-crackdown-234548038.html?soc_src=mediacontentstory&soc_trk=f
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"Arrest warrant issued for Cambodian opposition leader" reported by REUTERS
<http://news.yahoo.com/arrest-warrant-issued-cambodian-opposition-leader-120356323.html>
"Rainsy faces arrest as violence flares" reported by NIKKEI Asian Review
<http://asia.nikkei.com/Politics-Economy/Policy-Politics/Rainsy-faces-arrest-as-violence-flares>

OHCHR

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16682&LangID=E>

³ In interview by RFA (Radio Free Asia), Chheang Von, senior CPP member and National Assembly spokesman said that Sam Rainsy would be arrested immediately after his return to the country as the Court of Appeals ruling in 2013 revoked his privilege as a lawmaker.

<http://www.rfa.org/english/news/cambodia/warrant-11132015165238.html>

However, Article 80 of the Cambodian Constitution stipulates that accusation, arrest or detention of members of the National Assembly is only allowed by approvals from the National assembly or the National Assembly Standing Committee held during NA is in a session. Also, since Article 150 of the Constitution stipulates that the Constitution is the highest law of the country, if the ruling by the Appeal Court did revoke the parliamentary privilege, it clearly constitutes a Constitutional violation.

⁴<http://bigstory.ap.org/article/1156079052eb4e22a34e3654e96abcc1/cambodia-poised-arrest-opposition-leader-violence-feared>

term. It is highly suspected that the act of disqualifying him as an MP and executing his arrest warrant at this time lacks a legal basis.

Also, although the decision of depriving Mr. Rainsy of his parliamentary privileges is reportedly based on a majority vote of the National Assembly Standing Committee, Article 80 of the Cambodian Constitution stipulates that decisions of the Committee must be submitted to the National Assembly during the next session and must be approved by a two-thirds majority vote. Thus, rendering the decision of the Committee as a final decision without the approval of the National Assembly should be considered a constitutional violation.

5. Recommendations

The series of repressions against opposition politicians is an extremely serious situation, and they could be interpreted as a challenge to democracy and the rule of law as they violate the Cambodian Constitution and freedom of expression and political activities guaranteed by the Universal Declaration of Human Rights, ICCPR, and Article 41 of the Constitution. In light of the critical situation of democracy in Cambodia and freedom of political activities, Human Rights Now makes the following recommendations to the relevant parties.

To the National Assembly

- To review the resolution on the removal of Kem Sokha as first vice president of the National Assembly, which clearly lacks a constitution basis, and to take concrete actions to restore his status.
- To take measures to restore Sam Rainsy's qualifications as a lawmaker and parliamentary immunity.

To Phnom Penh Municipal Court

- To respect the Constitution, suspend the enforcement of the arrest warrant against Mr. Sam Rainsy, and to withdraw the subpoenas.

To the Cambodian government and the ruling Cambodian People's Party (CPP)

- To never again conduct unconstitutional and illegal repressions against Cambodian opposition MPs

In Addition, Human Rights Now calls for the involvement of the international community to overcome the critical situation facing democracy and freedom of political activities in Cambodia.

To the Japanese government and International community

- To work with the Cambodian government, through all diplomatic opportunities, to protect the freedom of expression for all citizens irrespective of their political affiliations and based on international standards.